

THE
PRACTICK PART
OF THE
L A W.
SHEWING

The Office of a COMPLEAT ATTORNEY, in the full prosecution of any Action, whether Real, Personal, or Mixt, (from the very Original, to the Execution) in all Courts, with the exact Fees of all Officers and Ministers of the Courts.

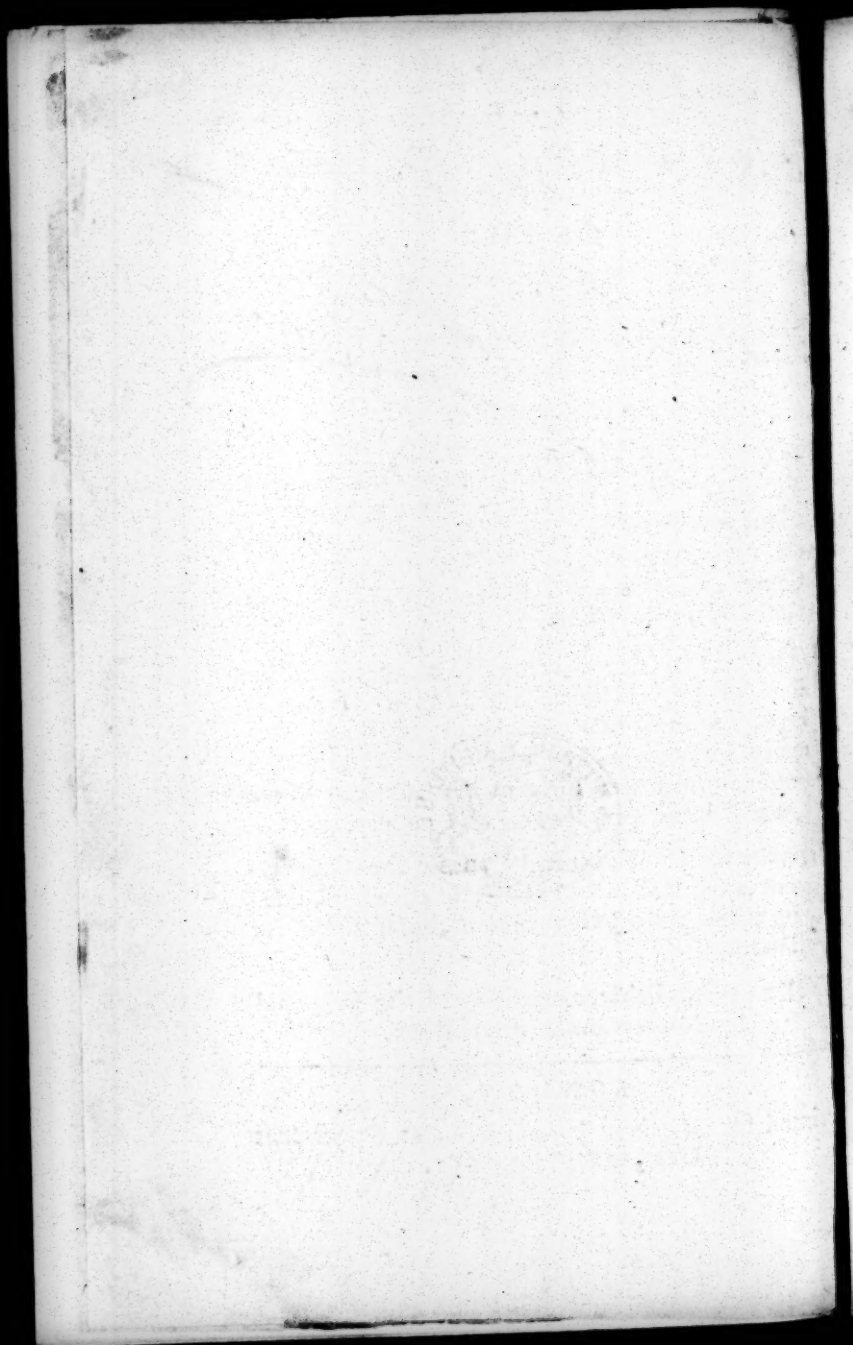
Most part of which was composed and collected by G. T. of Staples-Inne, and T. P. of Barnards-Inne, with some new Additions to the same, formerly licensed and printed for Matthew Valbancke, under the Title of *The Attorney of the Common-Pleas, and The Book of Fees, &c.*

Together with special instructions for the solicitation of any cause in Chancery, or elsewhere, relating to the present Government, being useful for all men.

With a perfect Table, containing all the principal Matters in the whole Book.

LONDON,

Printed for Matthew Valbancke, at Grays-Inne Gate, in Holborn, 1652.





TO THE
THE READER.

Reader:

HAVING observed the many Errours dayly committed through the mistake of the nature of the Action to be Sued, and consequently, as well the misgrounding of the Action, as the undue prosecution thereof, to the utter losse of many a Cause, hath put my intentions on work to give thee some light, in such wayes, where either thou dost voluntarily go to Pursue thy right, or art involuntarily driven to defend thy right. To that purpose was this composure undertaken, wherein thou shalt finde the whole progresse of the Law in the practicall part: So that whether thou hast businesse of thine owne, or on the behalfe of another, hereupon all occasions

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The Epistle.

casions, thou mayest finde instructions, for a due and full prosecution thereof; there being scarce any actions, Reall, Personall, or Mixt, in what Court soever, but its Nature, Progress, Judgement, and execution is here explained, with the duty of all Officers Judiciary and Ministeriall; as also the justifiable Fees and Allowances of the Prothonotaries, Masters of Offices, Secondaries, Clerks, Attorneyes, Sheriffs, Under-Sheriffs, Bayliffs of Franchises, and prescribed Liberties, the Practice of the high Court of Chancery, the Fees of the Six Clerks, &c. All which being methodically composed, with an exact Table to every particular, will I hope render thee a benefit worthy of thy kinde acceptance.

Farewell



The Compleat Attorney.

Being full and exact Directions for all manner of Proceedings at Law, in all Courts whatsoever: Together with all Fees incident thereunto.



THE Office of an Attorney requires much knowledge both of the Theorique and Practique parts of the Law.

The one is to be gained out of the body of the Law, and cannot be ascertained in this small Tract.

For the better enabling of him to the latter is this ensuing Discourse intended, wherein we shall begin with the Court of *Common-Pleas*, as being of the largest Extent, in relation to the multiplicity of Actions, both real, and personal, and mixt, properly incident to that Court wherein all persons of the Nation, either as Plaintiffs or Defendants, are more or less concerned.

This Court consists of a Chief Justice, and three other Judges.

The subordinate Officers are,

The *Custos breviarum*, or Keeper of the Writs.

Three *Prothonotaries* (one of which was antiently incident to the *Custos breviarum* for the time being) who by themselves and their Clerks, draw all Pleading, and enter them, and exemplifie and record all common Recoveries.

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The Clark of the Warrants, who entreth all Warrants of Attorney, and inroleth all Deeds acknowledged before the Justices of the Court.

Philizers, who make all manner of Mean pioesse upon originall writs before appearance.

The Clark of the Esoynes, who doth enter the Esoynes and exceptions in all Actions whêrein Esoynes ly, and prepareth and marketh all the Rolls used for the Court.

The Clark of the Outlawries, who maketh the *Capias ut lagatum*, upon the return of the Exigents brought in unto them: this Office is properly incident to the Attorney Generall for the time being.

The Clark of the Superfedeas, who makes Writs to supersede the Outlawing of Persons granted by Letters Patents under the great Seal of England.

The Exigents who are in number, and make the Writs of Exigents and Proclamations, in order to Outlawry upon the *Plures Capias* brought in unto them.

The Clark of the Juries who make the Writs of *Habeas Corporas*, and *Distringas Jur.* for the tryall of Issues,

The Chirographer, who doth make the Indentures of Fines levyed, & hath many subordinate Clarks for the severall Countiees where the Lands ly.

The Clark of the Kings-silver, so antiently called, who doth enter on record the Money which the State is to have upon Fines, for the Post-Fines, according to the yearly value of the land, as the same is rated on the Writs of Covenant.

The Clark of the Errours who makes all *Superfedeas* upon Writs of Errour, and doth transcribe the Records out of the Treasury, belonging to the Common Bench, into the Upper Bench.

The Keeper of the Treasury, who hath the keeping of

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of the Rolls entered of Record in the Court, and the making forth of Copies and Exemptions thereof, and also of all records of *Nisi prius*.

The Proclamator of the Court; the Keeper of the Court: The office of Inrollment of Fines and Recoveries erected by Statute.

Four Cryers, or Tipstaves, Substitutes to the Proclamator.

The Warden of the Fleet, who by himself or his Deputy is to attend the court, that Prison being proper for all Commitments out of that Court.

The pleaders are all Sergeants of the Coife, none under that degree being allowed to plead in that Court.

The Attorneys are very many, being not limited to any set number, antiently they were such as either had studied the Law for some years in some Inne of Chancery, where was usually their residence, or had served for the space of 6 or 7 years, with some able Attorney of the Court, whereby they come to be very knowing in the practise of the Court, the better to manage their Clients Causes wit' ability and integrity, to the honour of the Court, and their owne credite.

At the time of their being admitted Attorneys, there is an Oath administred unto them as follows.

You shall doe no falshood, nor consent to any to be done in the Court; and if you know of any to be done you shall give knowledg thereof to my Lord Chief Justice, or other his Bretheren, that it may be reformed. You shall delay no man for lucre or malice, nor shall encrease no fees, but be contented with the old accustomed fees. You shall plead no forreign plea, nor sue no forreign suites unlawfully to hurt any man, but such as shall stand with the order of the Law and your Conscience You shall
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seal all such Processe as you shall sue out of this Court, with the seal thereof, and see the Kings Majesty, and my Lord Chief Iustice discharged of the same: You shall not wittingly nor willingly sue, nor procure to be sued, any false suit, nor give aid or consent to the same, on paine of being expulsed from the Court for ever. And further, you shall use your self in the Office of an Attorney within the Court, according to your learning and discretion; So help you God.

Having taken his oath, he is to pay the fees of Court incident thereunto, as follows.

Imprimis, to the Judges Box, 20 s.

To the Secondary of the Chief Prothonotary, who giveth the Oath, 12 d.

To the Cryers, Court Keeper, and other Officers, 11 s.

Then must he have a Note from the Prothonotary, in whose Office he intends to enter, directed to the Clark of the Warrants, which is usually made as follows.

Of the Term of St. Hillary, in the year, 1651.

T.D. Gent. sworn in Court the 10. day of February, in the self-same Term, in the Office of Attorney of the Common-wealth of the Common-Bench.

To which the Prothonotary subscribeth his Name.

Which Note being delivered to the Clark of the Warrants, he enters the Name into the Roll of the Attorneys Names.

The Clark of the Warrants hath for the entering thereof, 4 s. and 4 d. and for the Roll of that Term 4 d.

And so he stands charged to pay 4 d. for the future, so long as he continueth an Attorney of the Court for each Term.

The Attorney thus fitted for practice, he must be
very

very careful in taking right and due instructions from his Client, and inform himself of whatsoever is materially incident to his cause; that so he may know what manner of action is most proper to be brought on the behalf of his Client; for a cause once thoroughly weighed, and rightly grounded, goes on with a great deal of ease and satisfaction, both to the Attorney and Client.

The Attorney ought to be thoroughly versed in the nature of all sorts of Writs, as in the Register, Terms of the Law, and other Books now extant.

To begin with Actions of Debt.

First, you are to take notice of your Plaintiffs Name, and of his cause of action, whether it arise by Bond or Bill, which are called Specialties, or otherwise for arrears of Rent, Wares, Cattle sold, or any other chattels, or for Work or Service done, &c. If by Bond or Bill, you must take an exact Note of the Defendants Name, together with his addition precisely, as he is written in the Obligation, or Bill, that so you may make your original and your other processe to agree with the Obligation, otherwise it is Error.

That done, you must make a short note to the Cursitor, if in debt, as follows.

London, il. *Command* J.C. late of London, *Gent*, otherwise called J.C. of L. in the county of H. *Gent*. that justly, and so forth, he render T.B. 4th L. &c. Original returnable 15. dayes after Faste. Giles.

Which being done, you must carry your Note, or Notes to the Cursitors Office, and deliver it to that particular Cursitor who is for the County you lay your Action in, who maketh your Original, and delivereth it you under Seal.

This Original is your first Processe, and is a Summons: and although it issue out of the Chancery, yet

it is made returnable before the Justices of the *Common Pleas* at a certain return : And between the Teste and Return of the same (as also in all other ordinary writs to be sued forth, and procured upon the same) must be 15 days at least.

Note that this Write may bear Teste out of the Term, because it is to be understood that the Court of *Chancery* is alwayes open.

All other proceffe sued forth at the Court of *Common Pleas*, must bear Teste sometime within the Term, and in the name of the Chief Justice of the same Court for the time being, and one Writ is to bear Teste from the return of another, as namely the *Capias* (which is the next Writ to the Originall, in an action of Debt) from the return of the Originall, the *alias Capias* from the return of the *Capias*, and the *Plures* from the return of the *Alias*, and the Exigent and Proclamation from the return of the *Plures*, and these are the severall Writs in order to an Outlawry.

The return of your Originall in Debt is thus.

John Doe.

Pledges of Prosecuting

Richard Roe.

The within named *I. S.* hath nothing within our Bayliwick whereby he may be summoned.

The answer of *R. B.* and

I. S. Sheriffs.

It there be two Defendants in the Originall, the Return must be thus.

The within named *I. C.* and *D. L.* have nothing within our Bayliwick whereby they may be summoned.

If there be more then two Defendants, then thus, *I. C.* and the rest of the Defendants within written, have nothing within our Bayliwick whereby they may be summoned.

Now

Note it is said (within our Balywick) because the Action lies in *London* where there are two Sheriffs, otherwise where there is but one Sheriff you say (within my Baliwick) and the like for all other Cities that have two Sheriffs, and likewise the words (the answer of) are intended only where there is two Sheriffs, otherwise you barely recite the Sheriff's name and stile at the bottome of the back of the Writ.

Your Originall being thus made and returned, you must deliver the same to the Philizer of the County, City, or Shire where your Action is laid, to have such further processe made thereon, either in suing to the Outlawry, or otherwise, as the present Term wherein you sue forth the same, shall by reason of the length or shortnesse of the time allow, observing the former rule of fifteen days betwixt the Teste and the return of every Processe.

The ordinary and usuall processe thereupon with the Philizer, are those formerly mentioned which he maketh upon the Originall Writ brought to him, for which you deliver him 4 d. as payable to the *Custos bre-vium* for filing the Originall.

First, A *Capias*. for which you pay 10 d.

Secondly, An *Alias Capias*, for which you pay 6 d.

Thirdly, a *Plures Capias*, for which you pay 6 d.

The returns whereof are as follows.

The within named *J.C.* is not found within our Bayliwick.

And if more then two Defendants, then thus.

J. C. and the rest of the Defendants within written are not found within our Bayliwick.

The answer of R. B. and J. S. Sheriffs.

But if you intend not to sue the Defendant to an Outlawry, but that his body may be easily and readily arrested, then you need not proceed further then

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To the *Capias* only, and deliver the same to the under-Sheriff of the county, and procure a Warrant thereupon, and get him arrested by the Sheriffs Bailiffs, which is a great furtherance to your clients cause, in relation to tryal, and procuring Judgement.

Note, That you are to pay 4 d. as a *Pest diem* for each of the aforesaid Proceſſe, which you bring not in to the Philizer by the day of the return.

The two chiefe Terms wherein to commence Suits to the Outlawry, are *Easter* and *Michaelmas* Terms, they having in them the most Returns, for if you begin in *Easter*, you shall outlaw the party, if he appear not in *Michaelmas* Term, next following, and if you begin in *Michaelmas* Term, you shall do the like in *Easter* or *Trinity* Term then next following.

Note, That you may have an Original *Writ* made returnable of a precedent Term upon bringing a Note to the curſitor within the first week of the following Term; but if you slack that time, you lose your advantage.

Antiently the courle hath been, that if an original Writ be made against a Knight, Esquire, Gentleman of Worth, or other substantial Free-holder, that hath sufficient Lands and Tenements in the same County where the Action is laid, then ought a Summons to be returned by the Sheriff of the county, who is to execute it: And you cannot return that original of course by the return of (having nothing &c.) for otherwise the Defendant, if he have sufficient in the same county, and he be returned, (to have nothing, &c.) may bring an action of the case, for disabling of him in his Estate against the Attorney for the Plaintiff, or against the under-Sheriff of the County, who shall make such return

to disable him upon a Summons; if he appear not, you proceed by a *Pone*, and so a distress; and if he appear not upon the *Distingas*, you have an *Alias Distingas*, and so Distress upon Distress until he appear; but this manner of proceedings by way of Summons hath not been used of late.

Upon the making and suing forth of every original Writ, if the Debt or Damages therein specified do exceed forty Pounds, then there is a certain Fine due for the same, to be paid formerly to the King; now to the State, as follows.

Imprimis, From forty pounds to a hundred Marks, payes 6 s. 8 d.

From a hundred Marks to a hundred pounds, payes 10 s. 0.

From a hundred pounds to two hundred Marks, payes 13 s. 4 d.

From a hundred thirty three pounds six shillings and eight pence, to a hundred sixty six pounds thirteene shillings and foure pence, payes 16 s. 8 d.

From a hundred sixty six pounds thirteen shillings and four pence, to two hundred pounds, payes 20 s. 0.

And so consequently for every hundred Marks more, payes 6 s. 8 d.

And for every hundred pounds more, payes 10 s. 0.

If you begin in *Easter Term*, you may procure your *Capias*, and *Alias Capias*, returnable in *Trinity Term*, and in *Trinity Term* sue forth your *Plures Capias*, Exigent and Proclamation; if in *Michaelmas Term* you may sue forth the original *Capias* and *Alias capias* returnable the same Term, and a *Plures capias* returnable in *Hillery Term* then next following, and in the same term procure your Exigent and Proclamation.

Note

Note that if you lay your action in *London*, the Party will be sooner out-lawed, in respect of the *Hustings*, being oftner there then elsewhere.

Now if the party have sued out his Originall in *London*, and the party live elsewhere, and that he would have him more speedily arrested then by way of Out-lawry upon the return (of the parties not being found, &c.) By the Sheriff, he may have a *Testatum*, into the County where he liveth, to arrest him there; the fee of which Writ is twelve pence.

All the Writs before mention'd must be filed with the *Clarus brevium*, either by your self or the Philizer, or else their will by Errour in the proceedings.

The *Plures Capias* being orderly procured, sued forth and returned, must be delivered to the Exigent of the County where the action is laid, and he will make an Exigent, and Proclamation there-upon.

The Exigent and Proclamation must be delivered to the under-Sheriff of the same County where the Defendant dwelleth, to be executed according to the form of a Statute, in that case made and provided, and according to the tenure and form of the said Writ.

The charge of a Sute to the Out-lawry are as followeth.

For 2-
gainst
Roe.

}

Easter Terme, 1651.

l s d

For the Fine to the State.

0-10-00

For the Original, *Post diem*, & Entry.

0-1-5

For the *Capias* Seal, and *Post diem*.

0-1-9

For the *Aliaseapias*, Seal, & *Post diem*.

0-1-5

For the Attorneys Fee.

0-3-4

s d
17-11

Trinity

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Trinity Term following.

l s d

For the <i>Plures Capias</i> , Seal, and <i>Post diem</i> .	0 - 1 - 5	}	
For the warrant of Attorney.	0 - 0 - 4		s d
For the Exigent and Seal.	0 - 1 - 7		8 - 9
For the return thereof.	0 - 1 - 0		
For the Attorneys Fee.	0 - 3 - 4		

The sum totall is 1 - 6 - 8.

If the Exigent be against severall Defendants living in severall Counties, severall Proclamations must goe to the Sheriff of the severall Counties, which will increase the charge: And further take notice, there must be of necessity five County dayes, between the Teste and the return of the Exigent, or else you must be necessitated to sue forth another Writ, called an *Allocatus*, from the said Exigenter, to be delivered to the said under-Sheriff, to the great hinderance and charge of the Client; and your *Allocatus* must bear Teste with the return of your former exigent, and be returnable the next return after the fifth Countie-day, and your Exigent and Proclamation must have one and the same Teste and return.

You must carefully examine all the aforesaid Processes, that there be no difference or variance either in the summes, names, or additions, from your Originall Writ, that so they may each warrant the other.

The same Term that you sue forth your Exigent and Proclamation; you must then file a Warrant of Attorney (for the Plaintiff who is your Client) with the Clark of the Warrants, in failer whereof you commit manifest Error in the prosecution of your Cause

cause, to the great hinderance and hurt of your client, and danger of your self, by incurring the forfeiture of ten pounds, by a Statute made in that behalf.

The form of a Warrant of Attorney is as follows, and must be ingrossed in Parchment.

London, ss. A.B. puts in his Place C.D. his attorney, against T.F. lately of London, Gentleman, otherwise called T.F. of S. in the county of Gloucester, Gentleman, of a Plea of Debt, Thus upon Specialty.

In an action of Trespass thus.

D*orset, ss. G.W. puts in his plate T.F. against J. L. late of Blandford in the county aforesaid, of a Plea of trespass: and the like in other actions.*

The Exigent and Proclamation being returned, you must then file the Proclamation with the *custos breviarum*; and if you file the same or any other Writ there, before the return be past, or upon the return day, then you must pay nothing for filing the same; otherwise every Writ payes 4 d.

Well experienced Practisers know how to save many of their *Post dicms*, by having their Writs made ready in an early manner.

In case of not filing your Writ or Writs, in or of the same Term they are returnable, they force you to pay when you file them with the *custos breviarum*, for the *Post terminum* of them, which is 20 d. for every Writ, every Term the same is unfiled, except Exigents, for which you pay only one *Post terminum*, which as aforesaid, is 20 d.

It is very unsafe in relation both to your self and Client, to keep your Writs unfiled (the filing of them

them being the substantial warranty for the proceedings had upon them) least a caviat be obtained from some of the Judges in that behalf, which is called a *Ne recipiatur*.

The Exigent being returned by the Sheriff of the county, and you being willing to procure Process of Outlawry against the Defendant to arrest him, upon the same he being outlawed, you must then carry the Exigent so returned, to the Clark of the Outlawries, for the time being, and he will make you a Writ or Writs, into any county you shall desire him where you can any wayes discover the Party to be, or any Estate of his, either in Lands or Goods, yea into several countries at one time, because those Writs are as well on the behalf of the King, as for the Plaintiff.

There be two several Writs of *capias utlegat*. the one called a General *capias utlegatum*, being for the apprehending of the body of the Defendant only. The other especial, being against his body, Lands and Goods.

You having now the Exigent in your hands, ready to file, I thought fit to let you know the accustomed Fees for suing the Outlawry out, and Process thereon.

The Fees of the Capias Utlegat.

THE filing of the Exigent with the clark of the Outlawries in the same Term, it is returnable,

payes 1 d..

If it be with a *Post terminum*,

payes 20 d

The general *capias ut legat*.

payes 10 d.

The special,

payes 2 s. 4 d.

The Seal for either,

pays 1 d.

The fee of the Attorney suing it forth,

3 s. 4 d.

Several wayes there are to discharge and avoid the same as occasion serves, whether the party be taken or otherwise.

The

The first and most usuall way is, to reverse it by Error, found in returne of the Exigent, which may be committed many wayes, and is not unfrequent either by mistaking the County dayes, in not allowing sufficient time between any of them, or in misnaming of the person, or omitting or mistaking of the Sheriffs name to the same Writ or Returne, or by words which will beare no signification, or otherwise, as Experience and Practise will better instruct you: And secondly by any Error to be found in the Return of the Proclamation, which may be committed many wayes as aforesaid

Likewise for want of filing the Proclamation with the *Custos breviarum*, as also for want either of the Return, or a due Return or Mis-entry or Mistakes, either in the Originall *Capias*, *Alius*, and *Plures*, aforesaid.

For all which there must be diligent search with the *Custos breviarum*, or in the other Offices where the proceedings have been.

Upon the finding of any sufficient Error, either in those or any other the proceedings: Then the file of Writs in which said matter of Error in Writ is filed, must be brought by the *Custos breviarum*, into the open Court, there to be seen and persued by one of the Judges of the same Court: and the Errors to be allowed, or disallowed, according to his discretion and judgement.

Upon Reverfall of an Outlawry for want of Proclamation in all Cases; or for any other default, if the debt or damage amount to 20. *l.* or above, there must be speciall Bayle entred by the Defendant with Sureties to answer the Plaintiffs suite, and pay the debt and damage demanded, or yeeld his body to Prison, if the Defendant shall be condemned in the Action which Bail must be taken out into the Remembrance

membrance in the same Prothonotaries office, where the same is reversed. And then if the party outlawed be taken, and arrested, or fear to be so, upon notice of an Exigent against him, he may have a Writ of *Supersedeas* directed to the Sheriffe of the County where he is, or seateth to be taken for his discharge, which Writ is to be made and signed in the same Prothonotaries Office where the Outlawry is reversed.

The Outlawry thus reversed, the Defendant is bound by his Attorney to appear, and to accept of a Declaration at any time within two Termes then next following after the said reversall, and then to answer according to course of Law.

Upon the reversall of every Outlawry, the Attorney ought to have a note or Certificate thereof from the Prothonotarie to the Clark of the Outlawries, that no further Proces may be made against the defendant upon the same, and to see the Outlawry booke discharged, for which he must pay 2 s. 8d.

The Fees of the reversalls according to the occasions are uncertaine, but the usuall and customed Fees follow.

For search and Copie of the Outlawry,	3d.
For search with the <i>Custos brevium</i> for every particular Term you need to use,	5d.
For carrying the bundell of Writs to the Hall,	2 s. 9 d.
For putting in the Bayle,	6 s. 4 d.
To the Boxe,	1 s.
To the Prothonotary for Entering the Reversall upon insufficiency of the Return.	8 s.
For the Judges Fee.	4 s.
To the Clark of the Outlawries for discharging the Booke,	3 s. 6 d.
For the <i>Supersedeas</i> ,	2 s. 7 d.
For the allowing thereof with the Sheriffe,	2 s. 4d.
	An

An Outlawry also may be reversed, although there be no Errors in return of Entries of the Exigent or Proclamation: and although the Proclamation be filled with the *custos brevium*, as namely, if that the same Proclamation were not awarded according to the form and effect of a Statute in that case provided, into the county, and the Defendant named of the Parish where he had been resident, *infra annum & diem*, when next before the same Suit was begun and commenced; or that the Defendant be misnamed therein, in his Surname, Degree or Mystery: and this reversal is to be done by way of a Plea drawn by a Clark to that purpose, for which you shall find precedents in the Book of Entries; to which Pleas the Attorney-Generals hand must be procured; but this way as being both very troublesome and chargeable, is much out of use.

An Outlawry may be also reversed by the Kings General Pardon, which is usually granted at every Parliament, if so be the Defendant were outlawed before the day thereby limited, or by a special pardon, which must be done by way of Plea, and *Scire facias* directed to the Sheriff of the same County wherein the Action was first laid: and if the Sheriff do return a *Scire feci* upon the said *Scire facias*, then you shall need but one writ of *Scire facias*; if not, then you must have two returned, *Nihil*, &c. in this manner:

The within named A.C. (the Plaintiff) hath nothing within my Bailiwick, by which I am able to make known unto him, nor is found in the same.

D.I. Knight Sheriff.

These *Scire facias* are to be drawn by the Prothonotaries Clark, and then entred into a Remembrance in the same Office, and a *Supersedeas* made, and a Certificate also made, as above, from the Prothonotary to the

he Clark of the Outlawries; that from thence forth no further Proceſſe may be made againſt the Defendant, and alſo entred upon Record.

And note in this caſe alſo, the Defendant muſt by his attorney appear; and answer the Plaintiff in his action, but no bail need be put in.

The Fees thereof.

For the copie of the Exigent,	8 d.
The two <i>Scire Facias</i> and Seales.	5 s. 2 d.
The Returns thereof,	2 s.
The filing of them,	8 d.
The taking out in the Remembrance,	1 s.
The copies,	3 s. 4 d.
The Prothonotary,	5 s. 4 d.
The <i>Superſedeas</i> ; and allowing thereof,	4 s. 11 d.
The certificate,	1 s.
The Clark of the Outlawries,	4 s. 8 d.
The attorneys Fee,	3 s. 4 d.

An Outlawry alſo may be revealed by writ of Error upon Error in the proceedings; as the want of the warrant of attorney; the not filing of the original, *Capias*, *alias*, or *Plures*, and then your courſe therein follows.

In the firſt place you are to have a copie of the Exigent or *capias utlagat*. which is to be carried to the cuſtiter of the county where the action lyes; and where the Defendant is returned outlawed, to have a writ of Error made thereupon; which writ muſt be brought under Seale to the Lord chiefe Juſtice of the common Bench; or his Clark, of the Errors for the time being, with the copie of the Outlawry, and thereupon the Clark of the Errors of the Common Bench makes a *Superſedeas* to the Sheriff of the County; where the Defendant either is, or feares to be arreſted for his diſcharge; and from him procure

cure a Certificate to the Clark of the outlawries (as formerly the charge of the *Superfedeas* is 33 s: 4 d. besides the search and copie of the Outlawry. And in this case the Defendant by his attorney must appear upon a new original sued out by the Plaintiff within two Terms: And this is the most usuall and ready way (though most chargeable) for discharging of an outlawry (especially in the vacation) if the Defendant be either under arrest, or fear to be arrested, but bail must be put in, if the debt or damages amount to 20 l. as in the like cases before recited.

It's requisite in this case the Attorney should take monie of the Defendant for the declaration, & his fee against the next Term, at the time of the delivery of the *Superfedeas* (especially if the Defendant be not well known unto him) and a warrant under his hand to appear, plead, or confesse the Action: for manytimes the attorney is put to a great charge and trouble to find out his Client.

These are the general & particular instructions and directions to sue to the outlawry, and to arrest thereupon, and how to reverse the same both in the behalf of the Plaintiff and defendant; besides which there are other wayes of suing by mean Processe when they proceed no further then to the taking out of an original, and then make an arrest upon the *Capias*, or in case the party cannot be taken before the return of the said *Capias*, then you may take out a *Capias* by continuance, which costs you 10 d. to the Philizer, and 7 d. for the Seal.

And having now dilated at large the several proceeds in actions of debt, in order to outlawry, or otherwise, and likewise the reversal of such outlawries, whereby the defendant comes to appear, it now rests we should shew how they may declare, and in what manner those declarations must be; But before we proceed so far

it will not be amiss to insert some few rules or observations as a guide for the Attorney, both in the taking of instructions, and drawing his severall Declarations in other personall actions as follow.

IN actions of Debt, either upon speciality, as Bond or Bill, or for Rent arrear upon a demise by indentures, or otherwise, or upon an action of Covenant, you must have recourse to the severall writings, by which you warrant your said actions, and the circumstance of time either for the date of the said writing, the place, the quantity of what Rent arrear, for what time, when Commencing and Ending, and that particular Covenant; if but one in an action of Covenant, you intend to insist on for laying of the breach aright, and likewise you must enform your self how your Client came to be Entitled to the Debt, whether as Obligee, or by some assignment, by Letter of attorney, or otherwise, as Executor or Administrator of the Obligee; And if for arrear of Rent, whether the party came to it by mean assignment of reversion, in which cases you are to inform your self of the Attornment of the Tenant, and for what time the Rent is arrear; and look what right the immediate Lessor or Lessees have the same, is in their assigns

If Rent grow due by Lease-paroll from year to year which is called, in respect there is nothing under hand and seal, but bearly by word of mouth, signifie the Demise, you must know the time of the Demise, ascertain the thing demised the Term the rent and them of payment of it: The time of the Lessees Entry, and what Rent is arrear by the Defendant.

If in Debt upon an Award.

YOU are to inform your selves of the Arbitrators names, the time of the Award made, and what was awarded; and if you can get the award it self, it is far better.

Note that if any under the age of one and twenty years, either in this or any other action, commence *Suite*, he must come in by his Guardian in proper person to be admitted; which costs two shillings the Admittance; otherwise if the Defendant take notice of his Nonage, and that he appear not by Guardian, but otherwise, the Defendant may plead it in Barre to his Action.

And now take some few instructions in other actions, as Trespass upon assault and Battery, false Imprisonment.

In the first place, take notice of the time, or any time after the Trespass done; before the Teste of your Originall of the trespass, by assault and imprisonment, and the place where (although I thinke neither of them Locall) together with the time, the Patty remaineth Deceased or Imprisoned, and what it cost him by way of Fine or otherwise, to be released.

And note for the assault of the Wife, children, or servant, the Father and Master, as well as the servant, may bring an Action, for the loss or hinderance he receiveth thereby.

For Trespass either in Closes or Houses; or chasing of Cattell, or fishing, where another man hath right as follow, and first,

For breaking your close, the certainer you lay it, in nameing the place, the time of the trespass done, and with what cattell; and how long the Trespass continued,

continued, and what Corn was consumed and eaten up, or trodden downe with the Fees; and what Grasse and of what value; and it were to be wished, in Relation to the saving much Charge, there were the same course taken in the Court of common Bench that is done in the upper Bench; that is, To ascertain the place of the Trespasse done, by giving in his particular name and bounds, which if done in the Declaration, would prevent pleading the commons Barre and new Assignment; and this with much ease, by saying, (The close of *A.* called *C.* in *D.* broke, &c.)

If any Trespasse done for chasing of Cattell, you must lay the time and place of chasing, worrying, and beating your Cattell, what Cattell; and how many they were; and what you were damnified by it; either in Ewes casting their Lambs, or being torne with Doggs: or Kine in loosing their Milke, casting their Calves; or Mares in the loss of their colts; and the like.

An action of Trespasse also lies against one, for the rescuing of his owne cattell out of your hands. in case you are driving them to the pound, for Trespasse or otherwise, or in case he breake the Pound, where you had Impounded them; and drive them away; in both which cases, you must shew what right you had to take them, either as Damage-Feasant, or that you did distrain them for Rent or services Arrears.

If your Trespasse be for taking away of goods or chattels, out of your ground or house (albeit Money) & such things are commonly taken out of your house, they are to be named particularly, and their value, if money in a Bag, the particular Sum.

In case a man take away a Ward, an Action lies, wherein you must shew, how the Plaintiff came to have

Right to the Ward which the Defendant detained, as if it be Knights service, by his Fathers holding of such a manner of the Plaintiffs, the Lands he dyed seized of &c. Shew the manner of the Tenure, and that the child's Father dyed in the Homage of the Lord, whereby the Right of the child's Marriage be longeth unto him: You must likewise know the time and place of taking him away, the age of the Ward, together with the Damage the Plaintiff sustained,

If by socage Tenure the Lands holden, then the next of kindred (to whom the Lands cannot descend) hath the like action for his ward, wherein he must shew what he dyed of in Socage-Tenure, and of whose mannour it was holden, together with the time the Plaintiff was seized of him, and the time, manner, and place of his taking away.

An action of Trespas for spoiling, or turning your Water-course, you first shew how he held the Water-course from, where, and whither the Water-course came, and that it had used so to come time out of mind; then what benefit it did the Plaintiff, as in making his grounds fertil, and for watering his cattel; then how the Defendant did stop that course, and with what, and the time, by reason whereof the plaintiff hath lost the benefit of it for such a time; or if the Ground be overflowed by the like course, then shew how the Defendant having such a water-course or Mills lying neer the Plaintiffs Ground, did open his Flood-gate and stoppe the water-course, and caused it to overflow the Bancks and drown the Lands.

In Action of account, take these ensuing.

IF an action be brought for Arrerages of account, as where divers Reckonings are between two Persons,

sons, and they account together, and upon that account the one is found indebted to the other; then know the time when the parties accounts were, and before whom, if they had any Auditors, and what the same ways, he was to account for, and the time when it was appointed to be paid by the Auditors.

If you charge any as Receiver for monies delivered, name the time when, and the place where, and the person that delivered it, and the sum that was delivered; if he received it for the Rent of any thing, it is best to name the thing for what it was.

If you charge him as a Bayliff of the Land & goods shew from what time he hath been so of the things under his charge, and of all things he received, and how long since he was Bayliff.

If you charge him as bayliff for any thing he hath sold for you, recite the thing to be accounted for.

Detinue

IF you would bring an Action of Detinue for any thing that you have bought, and cannot have, shew the time when you bought it, and what you paid, and the time for the delivery of it.

If you have delivered any thing to any man, and cannot have it again, you may have the like action, knowing the value of the thing delivered, and to what use you did deliver it, and what time was appointed for the redelivery of it; in case it be for writings, either upon the delivery, or that it came to the Defendants hands dy chance, know the Date and the effect of the writing, the time when the Plaintiff was possessed of it, and the time when the Defendant had it.

In Actions of the Case, take these ensuing.

First for Trover, which is for the recovery of Goods that come to any mans hands by chance or not in a warrantable way, know the nature of the Goods, the value of them, the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendants hands.

In an Action of the Case for words, if the Plaintiff have born any Office of credit, it would doe well to recite it in the Declaration, and know the time and place of speaking the words, either to the Plaintiff, or of the Plaintiff; together with what other Circumstances may make to aggravate the words spoken by the Defendant.

In an Action of the case, where felony is laid to ones charge, and the Party carried before a justice of Peace, and so bound over to the Assizes, be sure in this case to take notice of the time when, and the place where he laid the felony to him; and for what, and the constables name that detained him, and the justices name before whom he was brought; and the bayling or committing of him till the Assizes; the day of the Assizes held; and before whom the Copy of his Inditement, and his acquitall thereupon.

Upon an Escape upon a mean Process.

IF the Bayliff have arrested the party, you are to sue upon mean process; and neither for favour or Bribes, release him afterwards, so that you lose thereby the benefit of your arrest. For Instructions.

First

First know what cause your Client had against the person; so Arrested; and for how much money, and then set forth, that for the recovery thereof, he took out such a Writ, returnable such a time; directed to such a Sheriff; whereupon a warrant was made & delivered to the Bailiff; by vertue whereof he Arrested the party, and such a day released him.

When you buy any thing upon warranty; whether it be living **Cattell**, or any **Chattels**, or Goods that are warranted to be sound, usefull, and good; or that should contain such a number, of Leads, Pounds, Weight, or measure, and it holdeth not out so, an **Action** lyes, in which case you must take notice of the quantity and quality of the thing; when sold, and for how much, the time and place, and that the Defendant did warrant it to be good, &c,

An **Action** likewise lies against a Farrier, who for a Sum of money undertakes a cure, and wholly neglects it, or uses contrary or poysonous Medicines; whereby your Horse dieth or is worsted.

And likewise against a Smith that pricks your Horse in shooing of him; whereby he becomes lame and unusefull, and you lose the benefit of his Service.

And where a Taylor taketh a quantity of Cloath or Stuff to make a Suite, and cutteth it so scanty as that it will not be for the parties use.

And likewise for many other frauds and deceits, both in Shop-keepers, Artificers, and men almost of all Mysteries and Professions.

Having thus given some briefe direction what to take by way of Instruction and Information for the Attorney in behalfe of his Client, in order to drawing a Declaration; I shall now proceed to the said Declaration, Issue, and Judgement, after appearance made by Superdeas

sedeas to the Exigent, or upon any other appearance upon Arrest had by virtue of mean Process.

THe Defendant appearing by putting in special Bail to the action, or otherwise upon the *Capias*, *Alias*, or *Plurcs* in the Philizers Office, where the same was sued forth, or by *Supersedeas* to the *Exigent*, brought and allowed with the Sheriff, you must inform your self what attorney doth appear for the Defendant; that done, you must declare either upon Bond, Bill, Indenture, Trespals, or otherwise, as your case requires, always observing this rule, that there be no difference between the Additions in the writs of Summes; therein contained, and your declarations; for they must literally agree, the one being a warrant for the other; for if there be Variance, and the Defendant take notice of it, he may plead that Variance in abatement to the Writ.

And for the drawing of those declarations, it requires the skill, study, and experience of an able Clark of the *Prothonotaries* Office, and some helps there have been formerly by Books of *Entries*, which being at an extraordinary rate, have not been so much in use amongst Attorney, but there is now a book extant of select *Presidents* in *English*, for almost all declarations, out of the works of the learned *Prothonotary* Mr. *Brownlow*, and is of small price, sold by Mr. *Twyford* in *Vine-court* Middle Temple, to which I refer you.

Having your declaration drawn, you must enter it upon some roll of the court, in one or other of the *Prothonotaries* Office, either by your self or some Clark of the Office, who must see it put in the Docquet of that Office, and thereto put the number Roll, and so enter it in your own Docquet book, and keep your number Roll, that so you may have recourse to
the

the Roll afterwards to enter up your Continuances, if the cause continue above one Term before Judgement or tryall had.

By the course of the Court the Defendants are to answer the same Term they appear, if the writs be returnable at the beginning of the Term, especially in assuable Termes, which are *Trinity* and *Hillary*; but in other Termes if the action be not laid in *London*, the Defendant have for the most part imparlance, or time to plead till the next Term.

And here take notice, there be two kind of imparlance the and Generall, the other speciall; after a general imparlance had, the Defendant cannot plead in abatement to the writ, Excommunication, or the like, nor any priviledge out of another Court as a priviledged man.

But after a speciall imparlance many pleas may be pleaded, which after the general imparlance cannot be allowed: If a special imparlance be prayed, you must take for the Entry thereof of the Defendants attorney the summe of 2 s.

If the Attorney for the Defendant upon receiving a Declaration, do not crave that the condition of the Bond may be entred with the imparlance, and do not pay for the same, then he is debarred from pleading conditions performed at any time after, without moving the court, and paying 5 s. to the Judges Box.

Rules to answer must be entred in some of the Remembrances in on of the *Prothonotaries* Office, which is done briefly thus.

Hereford. ff. *An Imparllance between A. B. Plaintiff and L. D. lately of S. in the County of H Teoman, otherwise called A. B. of L. in the County of Teoman, Defendant, of a plea of debt.*

WHich being thus written; you put either in the Margent, or over head your rule, which is, *on the Defendant plead within (some few dayes) le Judgement be Entred.*

And these are entred either by the Secondary of the Office, where the plaintiffs Attorney enters his cause on the Bill of pleas; or as before I have said, by the Attorney or Clark for him, upon the common Remembrance; for which there is 4 d. and upon the expiration of the same rule, no Plea being brought in, you must signe Judgement with the *Prothonotary* for want of answer.

If the Attorney for the Plaintiff do not declare against the Defendant upon his appearance within reasonable time in the Terme after the appearance made; then the Attorney for the Defendant may also enter a rule in the Bill of pleas against the Plaintiff, to declare and thereupon cause a *Non prosecutus* to be entred; which must be signed with the *Prothonotary*; and Costs given for the unjust vexation; for which Costs he shall have Execution against the Plaintiff; but if the Plaintiff sue as Executor; or Administrator, he shall pay no costs upon any Non-suit.

The Imparllance is a time of leave, or licence given from one Terme to the Terme succeeding, by the Plaintiff to the Defendant, either to plead to his action brought, or to let it pass by default; and to that purpose the next Terme after the Imparllance had as aforesaid, the Attorney for the plaintiff may call to the Attorney of the Defendant, to answer to the Declaration

Declaration, and if he do not plead in due time, give him rule to answer; which done, and the rule expressed, he may enter Judgment as before is declared, either by *Verdict*, or by *Bill* *dict*, for the Debt and costs, as is fit and very small in cases before expressed, if Debt.

Where the Defendant pleads general Issues or pleas is most usuall, and now directed to be done by a statute lately made, whereby the special matter, if any be, may be given in Evidence; as in an action of Debt, that he owes nothing by the Country, &c. Or to Debt upon Bond or Bill penall, that he did seal and deliver through threats, &c. Or by reason of hard Imprisonment, or that it is not his Deed; or that he hath performed conditions, or the like; or in action of the case, the general issue not guilty for words; it upon promise, that he did not assume, &c. And for not guilty likewise in action of Trespass or Battery. In these are the like cases of common pleas or Issues; there is no more requisite, but that the Attorney for the Defendant, do put his hand to the Plaintiffs Attorneys *Dequet* Book, & that done, the Plaintiffs Attorney; doth draw up the Plea and make a copy of the Issue, & there delivereth it to the Defendants Attorney; who must receive it, and pay for entering such his plea, and for the Book; and then usuallly they give warning of a tryall, unless they forbear tryall the next Assizes.

But if the Defendant plead specially (which will not be so usuall as formerly) he is to bring it to the Plaintiffs Attorney under a serjeants hand; and if the Plaintiff reply specially, either by traverse or otherwise, the replication is also to be under a serjeants hand; and he is to give it the Defendants Attorney.

So if the Defendant demurre to a Declaration, it is also to be brought under a serjeants hand.

Its

It's most generall, that the Jury arise out of the County and Town or Parsh where the action is laid for tryall, unlesse it be removed by pleading, as where an action is brought upon a Bond or bill, and the action laid in *Herefordshire*, and the Defendant pleads conditions performed, for the mony paid at *Stow* in *Glocestershire*, according to the condition; here the, *venire* shall not arise in *Hereford*, but in *Stow* in the county of *Glocester*, and thither shall the record be carried to be tryed.

If an action upon the Statute of *Hue and Cry* be brought against a Hundred for a robbery done within the Hundred, the *Venire* shall not arise in that Hundred, where the fact was done (for then they would be Judges in their own cause, which is against common reason) but the *Venire* shall rise in the Hundred, next adjoining, and to this purpose, the *Venire* must be awarded especially; which is worthy observation.

After the Issue joyned and entered, there may be severall causes of challenge, as where the Defendant is of kindred to the Sheriff, either by blood or marriage, the Plaintiff may pray the *Venire Facias* may be thereto, it shall be accordingly. This must be specially awarded upon the Issue roll, and in the awarding of it, it must be set down and derived how the Sheriff is of a kindred, and then is the *Venire Facias* directed to the Coroners, and this is called a challenge to the array.

You cannot make a challenge to the Jury, till after they are called, and before they are sworne, for afterwards it comes too late.

If your tryall be by *Nisi prius* at the Assizes in the Country, and your Jury appear not full upon the pannel, the Plaintiffs Attorney may crave a *Decemta-*

les

Tales de circumstantibus, ten of the standers by to fill up the Jury, or a lesse number, according as is requisite, which *Tales* must be mentioned upon return of the *poslea*, and the judgement thereupon on the issue Roll.

And upon the Plaintiffs default, after the first Term the Defendants Attorney may bring the cause to tryall, by *Venire Facias*, by proviso.

If at the tryall of any *Nisi prius*, the witnesses of the Plaintiff or Defendant will not voluntarily appear, without being served with the process, to testifie the truth of their knowledge, in the matter or cause in question, then ye may have a *Subpœna adtestificand.* for the said witness out of the *Prothonotaries* Office, and there with serve them, and compell them to appear, the Fee whereof is 2 s. 7 d.

When you proceed unto your tryall, you must, having entred as before your declaration with the issue joyned in the *Prothonotaries* Office, you must make out a *Venire Facias* upon your Issue, and get it signed with the *Prothonotary*, and having sealed it, you must get it returned by the the Sheriff of the County or city where you lay your action, and upon return thereof, you must also sue forth a *habeas corpora*, which is made by a particular Officer of the Court, called the Clark of the Juries, he may warne the Jury, and get the same returned before the Affizes.

Note that if a cause be brought to tryall, and a *Habeas Corpora Juratorum* be delivered to the Sheriff who summons the Jury, and if you for reasons best known unto your self, defer the tryall untill some longer time, and afterwards you think fit to bring it again to tryall, you need not be at charge of a second *Venire Facias*, but may take a copy from the *Custos brevium* of your first writ, if you keep it not in your

you: hands paying him for it 8 d. and for the search of it 5 d.

Upon which Copie or old Writ, the Clark of the Juries will make you an *alias habeas corpora*, or *Plures*, paying for it in Debt or Trespaſs. 10 d.

And in other actions, 1 s 6 d.

And for the continuance of it every Term. 4 d.

Then you must in suing forth your *Nisi prius*, ingross the Record in Parchment, *Verbatim*, according to the Copie of the Issue made up, and the entry of it upon the Roll; in the Prothonotaries Office; and then examine the same with the Prothonotary, if it be upon an Issue joyned the same Term; whose hand must be to it; and then carry the same to the Clark of the Treasury for the time being; giving him such fees for signing and making up the Record, as are hereafter specified.

But if the Issue were entered of a former Term; then must you deliver the paper book of the Issue to the Clark of the Treasury; who will examine the same by the Roll, and make up the record thereupon; which done, & and the same signed by him or his deputy, you must seal the same with the Lord chief Justice of the court, for the time being, who hath a seal for that purpose & then deliver the record so sealed together with the *Habeas Corpus Jur.* returned by the Sheriff to the Clark of the office of the same county, where the matter is to be tried

The generall fees in an action of Debt, Trespaſs, &c. follow, as to make up the record s. d.

For the *Venire facias* 2 s. 7 d.

For the return thereof, 2 s. 4 d.

For the *Post diem* thereof, 4 d.

For the *Habeas Corpora Jurator.* and *Expedition.* 2 s.

For summoning the Jury, 12 s.

if

If in London, or a corporation, but	4s. 4d.
For signing the Record with the Clark of the Treasury, if the same exceed not three sheets.	2s.
For every sheet exceeding	4d.
For examining the Jurato	4d.
For writing the Record, for every sheet	4s.
For examining the same by the Prothonotary	1s.
For the Scale	2s. 2d.

Having thus procured your Record of *Nisi prius*, you are to carry it at the time of the Assize: & deliver it to the Clark of the Assize, & there pay the Judges fee, having retained your Councell, and your Witnesses being in readinesse for the tryall of the Truth of your Cause according to issue.

The Fees you are to pay at the Assizes are as follow;

	s. d.
For the Judges Fee, in putting in the Record of <i>Nisi prius</i>	11s. 8d.
To each Counsellor you retain at least.	10s.
For reading the Record	10ss
For the Marshalls Fees	2s.
For the Jury, eight pence a peice	8s.
To the Bailiff that keeps the Jury	2s.
For the Cryer	1s.
For the Oath of every Witness	4d.
For a <i>Non-suit</i>	
For a <i>Tales de circumstantibus</i>	
For a privy verdict	
For a Warrant of Attorney if the Attorney be absent	4s.

The Fees do somewhat differ by custome in severall Counties. But if the tryall be had before the Lord chiefe Justice of the common Bench in London

D

those

those are common fees to be added unto the former.

For the Green cloth.	1s. 6d.
To the Bar-Keeper and Hall-Keeper	2s.
To the Judges Groome or Foot-cloth-man.	2s.
To procure the Record to be read.	
For Lights, if the cause be tried by candle light.	

The Assizes ended, your trial being had, and verdict passed for your Client at the next Terme following, you are to call for the returne of the *Postea* from the Clarke of the Assize, & thereupon bring the same to the Prothonotaries Office to get costs assessed, for which end if your charges have been extraordinary you must bring a Bill of disbursements under your hand, otherwise not, and thereupon cause Judgement to be entred: For the entry whereof the generall fees are as follow.

For the returne of the <i>Postea</i> .	2s.
For signing the costs.	1s.
For entring the Judgement in the Jury did fully appeare.	2s. 4d.
If there were a <i>Tales</i> , then more.	2s.
For the Copy of the Judgement.	1s. 4d.

Having thus far proceeded, you may now procure Proceffe and Writs of execution, by *Capias ad satisfaciendum*, *fieri facias*, *Elegit*, or otherwise, according to your desire, and as the nature of your action brought doth allow or require; wherein,

Note that the *capias ad satisfaciend.* is the taking of the Body of the party only in execution, till he satisfie for the Debt and Damages; The *Fieri facias* against the Goods onely, and the *Elegit* against the Moiety or any one halfe of his Lands & Tenements,

and all his Goods and Chattels (his Oxen and Plow-
Cattell only excepted) to have & to hold the goods
as his own goods, and the said Moietie of the Lands
untill his Debt and costs shall be fully satisfied and
paid. But note this, that after an *Elegit* executed
and filed, you cannot never have any other execution,
it being your own Election.

Note also that if you first sue forth a writ of *Fieri*
Facias against the Goods of the Defendant, and by
vertue thereof levy part of the debt & not the whole,
then you may have afterwards a *Capias ad satisfaciend.*
against his body, or an *Elegit* for the rest, but if
you first Imprison his Body by vertue of a *Capias ad*
satisfaciend. then you cannot have a *Fieri Facias* a-
gainst the Goods, or an *Elegit*: if you have severall
Judgements against severall men for one & the same
debt, they being joyntly and severally bound for the
same; you may have two or three severall executions
against them all, untill the debt & costs be satisfied
by one of them, but cannot have the whole of every
of them; and if the Defendant be in another County,
& not to be found in the same County where the ac-
tion was laid, then you must sue forth a *Capias ad sa-*
sificiend. into the same County where the Action
was laid, and get the Sheriff to return upon it (that
he is not to be found) & then sue forth a *Testatum*,
into the County where he is to be found: And those
executions made immediately after verdicts, &c.
Judgements had upon them are made by the clerks
of the Judgements, in the respective Prothonotaries
Office, who keep the Judgement Papers, where they
are transcribed.

We have now shewed you the course how to pro-
ceed to tryall, after Outlawry reverled on an ap-
pearance, in case the Defendant plead an issuable
plea, or indeed upon any other appearance made upon

mean Process: Onely take notice of this, that if the Plaintiffs action be just and right, and for good debts or just causes of action; the Attorney for the Defendant shall do well to counsell his Client to yeeld to judgement, either by way of not being informed, confession, or otherwise, so that he procure stay of execution against his Client for such time as shall be agreed on by both Attorneys, which must be carefully look'd unto by the Attorney of the Defendant in time, before the rule be on, and they take Judgement by default: And this he shall do by putting his hand to the Plaintiffs Attorney Docquet Book, in this manner.

I am not informed so that Execution be staid till the Morrow after the holy Trinity.

Hereford ss. Bridges for Lacie.

Dowdeswell.

Dowdeswell for Hunt. Rot.

After which you draw up the Judgement short in paper & carry it to the Prothonotary, who is to tax costs, and for that you pay him 3s. 4d. if in debt upon one single contract, & then you are to take it out (the Plaintiffs name, & the Defendants and the Attorneys for the Plaintiff, in the Judgement Book) after which you enter it upon some Roll of the court in the Prothonotaries Office, & keep the number Roll by you to your Docquet Book, that so upon all occasions you may have ready recourse to it; & the Plaintiffs Attorney must be carefull of keeping together the Copies of all his judgements, that so when he hath occasion to renew them by *Scire facias*, he need not be driven to take out new Copies, which are chargeable out of the Treasury.

And note, that in case the judgement have continued above a yeare and a day, and no Execution taken out, he must be put to renew it by *Scire facias*

o must he likewise do, in case the Plaintiff or Defendant die.

And in case of any Judgement had in debt against an Executor or Administrator, you can have but a *Fieri facias* of the goods of the party deceased, in the hands of the Executor or Administrator; but if the Sheriff return upon your *Scire facias a devastavit*, then shall you have *Fieri facias* of the proper goods of the Executor or Administrator; & if the Sheriff return that he hath no goods, you shall have a *Capias* against his Body, and after an *Exigent*, and so to the Outlawry after Judgement, if you please, in case you find him not easily to be Arrested.

The Course whereof is thus.

First then he must have a *Capias ad satisfaciendum* to be made for the debt and Costs, if it be in debt; or after a Judgement had for Trespass for the damages and costs, as in the judgement with which must be made in the same County where the Action was laid; and get the same returned by the Sheriff, with (That he is not found &c.) Then he must carry the same to the *Exigenter* of the same County, who will make an *Exigent* thereupon, which must be delivered unto the under-Sheriff to be executed and returned accordingly, as other *Exigents*.

None that in this case there shall need no Declaration at all against the Defendant, to give him notice thereof.

The *Exigent* being returned, you may sue forth the Proccesse of Outlawry from the Clarke of the Outlawries, either generall or speciall, as in other actions afore specified; whereupon the Defendant, if

be arrested, cannot be discharged without satisfaction to the Plaintiff, & reversing, or pardon of the Outlawry; this is the utmost and last proceeding the Common Law doth or can afford in any case whatsoever.

The Fees to the Outlawry after Judgement are as follow.

FOR the *Capias ad satisfaciendum*.

For the returne thereof.

For the *Post diem*.

For the *Exigent*.

For the return thereof.

For the generall *Capias utlagatum*.

For the speciall *Capias utlagatum*.

Note that in this case you may have either general or special *Capias utlagatum* into as many severall counties as you will, either in England or *Wales*; but observe further, that no process whatsoever issuing or to be made in or out of the common-pleas, can be directed or executed to or by any under-Sheriff in *Wales*, but only *Elegits*, *Extents*, *Proclamations* upon the mean Process as before: *Capias utlagatum*, generall or speciall, or upon Outlawries after Judgement. If the Defendant be outlawed after judgement, if he cannot be arrested within a year and a day, yet the Plaintiff shall not need to renew Judgement by way of *Scire facias*, but otherwise in case he be outlawed, he must, as I before required.

The manner of renewing the Judgement by
Scire Facias.

FIRST, The Plaintiff must sue forth a *Scire Facias* against the Defendant in the County where the action was laid, directed to the Sheriff, to give notice to the Defendant to appeare and shew cause why the Plaintiff should not have execution against him, for the debt and costs formerly recovered: To which writ if the Defendant can shew any good cause as a release, satisfaction, or any other just cause or sufficient discharge, then he may appeare, & plead in Bar his discharge.

If the Defendant upon returne of the same *Scire facias*, do not forthwith appeare and plead, the Plaintiff shall have present Execution against him.

But if the Defendant, after the said Judgement obtained, and before Satisfaction of the said debt had, unlesse the Plaintiff procure a *Scire facias*, &c. to be returned upon the first *Scire facias* against the Executor, or Administrator, then the Plaintiff must sue forth a second *Scire facias* against the Executor or Administrator of the Defendant, and upon their second default, the Plaintiff shall have present Execution against them, having after the return of the said *Scire facias*, taken it out, and give a Rule in the Remembrance in the Prothonotaries Office to this purpose, that unlesse the Defendant plead something to this Writ (by such a day) Execution is to be made by default.

NOte that these severall Writs are to be made and sued forth together with the Execution in and out of the same Prothonotaries Office, and where

the first judgement was entred : And the said Writs of *Scire facias*, together with the new Judgement had thereupon, to be entred upon Record, in the same Office, and the Writs caretully filed with the *Custos brevium*.

The severall Fees are these.

For search in the Docquet for the Number- Roll	4d.
For searching in the Treasury	4d.
For the Copy of the Judgement usually	2d.
For the Clarke for making the Writ	8d.
To the <i>Prothonotary</i> for signing of it	1s. 4d.
For the Scale of it	7d.
For the return with a <i>Nihil</i>	1s.
For the return with a <i>Scire feci</i>	2s.
For entering the Judgement upon default upon one <i>Scire facias</i>	2s.
If upon two <i>Scire facias</i>	4s.
For the Copy	2s.
For taking the Writs into a Remembrance	1s.
For the Rule	4d.
For a Warrant of Attorney	3d.

Upon these proceedings duly and truly performed the Plaintiff may have Execution against the Defendant, by *Capias ad satisfaciend.* by *Elegit*, or otherwise, at his pleasure (as is before told you in writs of Execution :) And if the Defendant be dead, then there shall issue against the Executor, a *Scire facias de bonis testatoris*.

Thus

THus far having proceeded in debt against the Defendant himselfe, his Executor, or Administrator either by way of *Scire facias*, or otherwise, we now proceed to prosecution to judgement and execution upon speciall Bail; wherein observe these Rules following.

IF the Defendant be arrested by mean processe, as *Capias*, *Alias*, or *Plures*, and the Plaintiff holdeth him not sufficient to answer the debt or damages contained in the writ, the same amounting to 20*l.* or upwards: In this case the Plaintiff upon the return of the writ, may crave speciall Bail to be put into his action, which the Defendant must put in before some Judge of the court where the cause depends, who will accept of such Bail as the validity or weight of the cause doth require, or in his discretion shall be thought fit.

If the appearance be upon arrest, by the *Capias*, *Alias*, or *Plures*, then the Bail must be taken, and entered by the Philizer of the same County where the action was laid, and who made the said Processe.

BUT if the Defendant be arrested in the Mayor, Bailiffs, or Sheriffs court, of any City or Corporation, and the Defendant by any Writ of Priviledge, or *Habeas Corpus*, doe remove the same out of the same Corporation to be tryed at common Law above.

Then the Bail being taken by any Judge of the same court, must be entered in the same *Prothonotaries* Office, where the said writ of priviledge or *Habeas Corpus* issued and was sued out.

THe Defendant being as aforesaid bayled, the Plaintiff may proceed and declare against him

as

as the nature of his cause or action shall require, observing the same form & manner in every respect or point to procure Judgement & Execution by way of *Nihil dicit, non sum informatus*, confession of the action, tryall by *Nisi prius*, or otherwise, as is formerly set down and expressed by *Superfedeas*.

And the Plaintiff having obtained judgement against the Defendant, & perceiving that he is not easily to be arrested & taken in Execution, or not sufficient to satisfy the same, but knoweth the Bail to be better able then the Plaintiff, may at his choyce leave the Defendant, and prosecute the Bail in this manner following.

First, the judgement being entred he must sue forth an Execution by *Capias ad satisfaciendum* against the Defendant directed to the Sheriff of the same Countie where the action was first laid, & upon the return thereof, get the same returned by *Non est inventus*, that is (he is not to be found.) Then he must procure a writ of *Scire facias* against the Bail, to shew cause why the Plaintiff would not have execution against them according to the Recovery or judgement so had against the Defendant, upon which Writ if the Sheriff do returne a *Scire feci*, then there needs no second writ to be made, but if he returne a *Nihil*, then there must be a second Writ of *Scire facias*, which being returned likewise with a *Nihil*, then the two Writs of *Scire facias* must be taken out upon remembrance in the Prothonotaries office with the returns of them, & Rules thereupon given, and filed accordingly with the *Custos Brevium*; and thereupon if the Bail shew no cause to the contrary, judgement by default shall be entred against them in the said Prothonotaries Office, for the sum in which they became Bail as aforesaid, whereupon the Plaintiff

Plaintiff may take Execution out against them, either by *Fieri facias*, or *Elegit*, but not by *Capias ad satisfaciendum*.

AND in this case observe, that the Plaintiff may likewise sue and arrest the Baile going by way of Originall at the common Law, for the sum for which they became bail, & arrest their Bodies, either upon the *Capias alias*, or *Plures*, or sue them to the *Exigent* thereupon, and declare upon the said Recognizance, using all proceedings therein as in an action of debt; but in this the action must be laid in the County of *Middlesex* only, where the Records doe lye, and whence the *Venne* out of that respect must issue.

And if the Bail cannot be arrested in the County of *Middlesex* upon a *Capias*, &c. you may return (he cannot be found, &c.) and sue forth thereupon a Writ of *Testatum*, and by that means arrest them in any other County where they may be found, observing all the proceedings as in an action of Debt.

WE have now shewed you how to proceed against the Bail, as well as against the Defendant himselfe, we come next to shew you how to prosecute a writ of Errour & reverse judgement thereupon (which is not so absolutely taken away, as most men conceive by the late statute) but that still if there be substantial matter of error to be allowed of the court, it holds good after verdict, & is not at all taken away in Judgement upon *Nihil dicit*, &c.

And there are various causes of reversing an Our-lawry, as we formerly shewed, so some of them may serve to reverse a Judgement, which I shall here particularly relate.

After

The Compleat Attorney.

After a Judgement had and recovered by (*Non sum informatus*;) Confession or otherwise (if it be not by tryall of *Nisi prius*) these causes of Errour or any of them being duely found, and may serve to reserve & made void the same.

First, if there be any materiall difference or variance between the additions in the Originall, or the proceffe of *Capias*, *Alias*, *Plures*, and *Exigent*, and the Judgement which is warranted by them; this is good cause of Errour.

Secondly, if the Debt demanded be in the proceffe, or either of them, and the Debt in the Judgement recovered, do not agree, but are different, this is good cause of Errour.

Thirdly, if the writ be not ordinarily and duely returned and filed with the *Custos brevium*, there is a just cause of Errour.

Fourthly, if there be not warrants of Attorney duely filed, & put in the Office accordingly, as the caule requireth, as one for the Plaintiff upon suing forth of the *Exigent*, or upon the entry of the Judgement, there is good cause of Errour, for which you are to make search with the Clarke of the Warrants for the time being.

And for these & all other Errours, you are to search and get Coppies of the writs from the *Custos brevium*, and observe diligently both them and their returns, and confer them with the Judgement as it is entred upon Record in the Prothonotaries Office, where you are to take your number Roll out of the *Docquets* to that purpose, that so you may go readily to it in the Treasury.

Fifthly, if the Defendant be arrested by a Writ of *Testatum* in a forraigne Countie, and no Writ of *Capius ad satisfaciendum* returned against the Defendant with a *Non est Inventus*, in the same County where
the

the Action was laid and filed with a *Custos Brevium*, that is good cause of Errour in the Execution, but not in the Judgement.

NOW being informed of the causes of Errour, and that the Defendant be not arrested and taken in Execution, but would avoid the same, then must he proceed as followes.

IN the first place, having the number Roll, he shal do well to get a Copy of the Judgement, with the Additions of the party Defendant, and of the Debt and Costs of Suite literally as it is entred upon the Record.

The *Prothonotaries* Office as I formerly told you, is the place where you are first to resort, and there to the Docquet house, to find out your number Roll in the Docquets of that term, when the Judgement was entered; and having found the Cause, take the number Roll, and then repair to the Records in the treasury at *Westminster*, and so the Roll, and take a true Copy of the Judgement in all things, as above.

Then carry the same, or a Copy of the Precipe, Debt and Costs, to the Curfiter of the same Countie where the Action is laid, who thereupon will make you a Writ of Errour.

THEN you must go with the Writ of Errour to the Clark of the Errours, for the time being, who will take out the judgement with the Debt and costs of Suit, in his Book of remembrance for Bail, and be sure you carry with you good Sureties, such as the Validity of the cause doth require.

Thereupon your Sureties, together with the writ, must be brought to the Lord chiefe Justice of the Common

Common Bench for the time being, and there enter Bail in a Recognizance, together with the Defendant, in double of the debt, that the Defendant hath good cause of error, and shall follow the same Writ with effect: And if the Defendant shall happen to be condemned therein, & not able to prove sufficient error therein, then that the Defendant shall pay the condemnation therein, with further costs of suit, such as shall be allowed, or they the Sureties for to do the same; to this the Judge subscribeth both his hand, & thereupon giveth warrant to the said Clark of the errors to make *Superfedeas*, one, two, or more, the Defendant for his Indemnity, or safeguard from arrest, shall require which writ or writs the Defendant is to allow, with the Sheriff of the same County or Counties where he standeth in danger or fear of execution before he be arrested, or the said Execution executed, either upon body or goods, or else the said *Superfedeas* is of no force, nor can be allowed, whereof the Defendant is to have speciall care, that he have it in an early manner.

And this may be done as well in the Vacation, as in Term time, if the the Defendant be not arrested, or have his goods taken in execution, by vertue of the said Judgement.

But if the Defendant be taken in Execution, before the *Superfedeas* be procured, then the *Superfedeas* comes too late, for the Defendant shall not thereupon be released, but must continue in durance, untill such time as the Judgement shall be reversed by the said Writ of Error, in the Upper Bench.

FOR Reversall whereof, hee must not onely sue forth his Writ of Error, as above, but also cause the whole Record of all the Proceedings, from the Originall and the beginning of the same cause (if er.

our be not found in the Entry of the judgement it self) to be certified by the said Clark of the Errours, out of the common pleas into the Upper Bench, and assign cause of Errour there.

The Record being thus certified, and Errour assigned upon the return of the said Writ of Errour, he is to take Copies thereof, and thereupon sue forth a Writ of *Scire facias* to the Plaintiff, in the Action to hear Errours.)

To this the Plaintiff if he see cause may appeare & plead, and the most usuall & common plea there is, that the Record is in nothing Erroneous.

The Plaintiff having so pleaded, & willing to have the said Errour argued, and the judgement confirmed as cause shall require

The Defendant according to his Recognizance, must so lollow the same with effect, or else he will be condemned therein.

The Defendant is then to labour for a day, given for the arguing of the same Errour, if the cause shall so require

But if the Defendant do delay the Plaintiff, the Plaintiff is to sue forth two *Scire facias* against the Defendant, to shew cause why he would not have execution: And it at returne of the second *Scire facias*, Errours be not assigned, judgement is confirmed for the Plaintiff.

NOte that in this case upon a Writ of Errour brought upon a judgement had in the Court of common Bench, and returned into the Upper Bench, the proceeding thereupon must be only in the Upper Bench, to which Court and no other it doth properly belong after it is thither returned.

But

But a Writ of Errour upon a Judgement had in the Upper Bench must be returnable in the Exchequer Chamber; and the cause of Errour is onely heard and determined before the Lord chiefe Justice of the Common Bench, the Lord chiefe Baron of the publique Exchequer, & the rest of the Judges and Barons, who are of the Coise of those Courts, and not before the Justices of the Court of Upper Bench, where the cause formerly depended, and received its Judgement.

If the Errour be found and allowed by them, to be sufficient and good, then the said Judgement is by their full consent and judgement to be reversed and made void.

But take notice, that notwithstanding the reversal thereof, it takes not away the Plaintiffs cause of action, for the Plaintiff may commence a new action against the Defendant for the same Cause, if he so think fit.

If the Errour be not found good and allowed, then is the former Judgement affirmed, & further costs for delay of Execution allowed to the Plaintiff, who may presently sue forth Execution out of the court of Upper Bench, either against the Defendant or his Sureties as he thinks best, and prosecute against them, either by *Scire facias*, &c. as in the case of speciall Bail, as above, or by an action of Debt: But if any Writ of Errour be sued in any other Action then an Action of Debt, no Bail is required.

The Fees in this case are uncertain, and cannot be expressly set down, but the Heads of them, according to their proceeding, are as follow.

For search of the Record to find the Errour:

For

For the Copies of the Record.
 For the Writ of Error.
 For the Lord chief Justices Fee.
 For putting in Bail.
 For certifying of the Record.
 For assigning causes of Error.
 For an *Habeas Corpus*.
 For the allowing.
 For the return.
 For the *Superfedeas*.
 For the copy of the Writ of Error.
 For drawing *Diminution* if need require.
 For the copy thereof.
 For entering the Errors and Plea.
 For a *Certiorare* if need require.
 For a Certificate from the *custos breviarum*.
 For entering the same, and *diminution*.
 For the Warrant of Attorney.
 For the copies of the Books for the Judges.
 For Counsellors fees.
 For affirming the Judgement.
 For the copy thereof.
 For the *Scire facias* and entering.
 For filing and returning.
 For Attorneys fees.

Cum multis aliis quæ nunc, &c

NOte, That upon any Judgement recovered and had against the Defendant, he be taken in Execution, or have his Goods taken, or his Land extended for the same, and upon full payment and satisfaction of the debt and costs, the Plaintiff either in person, or by his Attorney, do acknowledge satisfaction upon Record in the said court wherein the Judgement was entered; and if the Defendant at no time, from thenceforth or after, make a Release of Er-

E

rors

reours to the Plaintiff, and that there be good cause of Errour found in the said judgement, the Defendant may bring a Writ of Error upon the said judgement and upon arguing thereof, (as before the Errours being allowed by the Judges, and the Judgement thereupon reversed) the Defendant, may sue forth a Writ of Restitution against the Plaintiff, and recover back again the full Debt and costs of Suit specified in the said Judgement; but if we have made a Release, he is void of remedy.

And take notice further, that if there be a Judgement had & recovered against the Defendant by way of *Nisi prius*, and verdict of twelve men, Then unless he can find some cause in the Originall for the entering or giving of the said Judgement after the verdict so given and had, he cannot be admitted to sue forth a writ of Errour; for by many Statutes, and particularly the Statute of *Jenfailes*, many great faults, misprisions, or causes of Errour had or committed in prosecution of the said cause before the said Verdict are taken away.

Observe further, that if the Defendant be out-lawed after Judgement, and there be good cause of Errour to be found as well for or in the said Judgement, as Out-lawry, the Defendant may bring a Writ of Errour and be bailed for both, and have a *Superfedeas*, as well for the safeguard of his body or Goods, before they be arrested or taken upon the same.

NOW because we have omitted to speak acknowledging of satisfaction where the Debt is satisfied and Judgement had, whereby the Defendant in case the satisfaction be not acknowledged may be in danger in paying twice, one and the same debt, therefore observe the ensuing rules

When you are to acknowledge for satisfaction, be sure

have a sufficient warrant for it from your Client, and likewise let the Defendant seal a release of Errours for the reason before alleged.

If it be in Term time, get the crier to bring the Roll into court, and lay it before the Secondary, with the cause ready before him, and pray him to enter satisfaction, which the Secondary of that Prothonotary whose Office the cause was entered, will do, you paying the fees as follow.

To the crier for bringing in the Roll, 6d

To the Box if the debt be not above forty pound 6d.

If above forty pounds for every hundred pounds, 1s

To the Prothonotary, 2s. 4d.

To the Secondary, 4d.

For the Attorneys fee, 3s. 4d.

Having gon thus far in actions of Debt, it rests now we should speake something of a wager at Law, which is a plea usual by the Defendant where an action of Debt is brought against him, either for money lent, upon a Book debt, or upon detinue, or any other action of Debt which is not grounded upon specialty (unless it be where an account hath formerly been before Auditors) in all which cases the Defendant may wage his Law, and there are two wayes of waging Law.

The first is called *Lex justantur*, which is when your Client will presently upon pleadings come into Court and swear that he oweth or detaineth nothing, in which case it behooves you to have your Client ready, at the time when you plead, and the next day, or second bring him into Court and let him doe Law, in which case the Plaintiff cannot become

non-suit; but upon a wager at Law at a day assigne he may be non suited.

Note *Lex instantur*, cannot be after a general imparlance, nor doth an Esloyn lye in that case.

FOR the other kind of wager of Law, which is *lex audiam*, where a day is assigned, there is to be given fifteen dayes at the least after the Law pleaded for doing thereof, that is, fifteen dayes after the commencing of your Imparlance, at which time, if your Client be not ready to doe his Law, he may be Esloyned (that is to be excused for that time) and have a longer day to do it, which you must do upon the Esloyn day of that return, wherein your Law should have been done in court.

Note that the Plaintiffs Attorney must ever look to the dayes of Exceptions, in case there be no Esloyn cast to enter a *Ne recipiatur*, but if there be an Esloyn cast then to adjourn it, and to look to the continuances, and this, and the nature of the Actions, the Esloyns are cast in require.

Note further, that upon an Esloyn cast, if it be cast and adjourned by the Plaintiff, he may be non suited, as before shewed.

If an Esloyn be cast where it will not properly lye, you may have it dissolved, which is called Quashing, which shall return the Defendant or Tenant at fault.

NOTE the Tenant or Defendant may for the most part be Esloyned upon every Original Writ before appearance, with cause or without cause, where by doth ensue great delay to the Plaintiff, and sometime the Defendant may be Esloyned after the Esloyn in Action reall; of which we shall hereafter treat more at large by it selfe. The Tenant for life at the return

return of the originall Writ may be Effoynded, and then the Defendant must adjourn the same, wherein must be given common days of return, & at the day given by the Effoynd, the tenant may demand the view, wherein must be given other days of return, and at the day of view, the tenant may be Effoynded again, and then he may pray in aid of him in the Reversion, and at the return of the Summons *Ad Auxiliand.* he that is prayed in aid, may also be Effoynded for nine Returns, at which time the first tenant may be Effoynded again: And all these delays the tenant may inforce the Demandant to suffer.

Note that in all reall Actions upon the Summons, the tenant may be adjourned by the Demandant unto the ninth return following, *Inclusive*, but of this more in its proper place.

The Fees incident to the wager of Law and Effoynds, Exceptions and adjournment follow in a Table among other Fees

Note that many of these actions of debt are brought in inferior courts, as in the Sheriffs or Mayors court in London, and in other Corporations, where they hold Plea by their Charters for very great Sums, where the Defendant for delay or otherwise doth usually bring a *Habeas Corpus* or Writ of privilege, which doth remove both the Body (if in prison) together with the cause.

This *Habeas Corpus* or Writ, or privilege, must be made by one of the *Prothonotaries* Clerks, and must be signed by one of the Judges of the court, and after by the Prothonotary, and after sealed and carryed under seal, and delivered to the Judge or Steward, or other Officer in chiefe, of such interior Court where the cause is depending, whereupon allowance of it, they return it, and certifie the causes

which done, he that brings the *Habeas corpus*, must put in bail above, before the Judge most usually the signers the Writ, such as the Judge shall approve when hee sees what the causes are.

But if the party doe not appeare at the returne of the said Writ, and put in good Bail in some short time (for they cannot put in common bail, though the Action be never so small) you may have a *Procedend.* to carry back the cause or causes to the court below, from whence they were removed, there to be proceeded into Judgement.

The Fees of a *Habeas Corpus* are as follow

To the clark for the Writ,	s. d. 0 8
To the Prothonotary for signing it,	1 4
For the Scale,	0 7
To the Judge for his hand thereunto	4 0
For the Attorneys fee,	3 4
For allowing the writ,	2 8
For the return of the first cause,	2 6
For every other cause,	1 0
For a bill of <i>Multas causas</i> if in London for search	0 4
To the Serjeant, if in London, for his fee at least	1 0 0
For putting in bail before the Judge for the first cause,	10 8
For every other cause,	3 0
To the Prothonotary for filing the Bail for the first cause,	6 4
For every other cause,	2 0
For the Attorneys fee	3 4

Now

Now because there are many miscarriages in these Habeas Corpus, whereby the Writs themselves become inusettull, in being not allowed, all which proceeds most usually from the mistake or title of the Corporation or Court to which it is directed, I have thought fit to insert the titles of the most Corporations throughout England, Alphabetically.

A

St Albones.

TO the Steward of our Burrough of Saint Albones; greeting.

Abnden.

To the Mayor and Bayliffs of our Burrough of Abnden in the County of Hertford greeting.

B

Bristol.

TO the Mayor, Aldermen, and Sheriffs, of the City or Town of Bristol, and to the Mayor and Constables of the same City or Town, and also to the Bayliffs and Commonalty of the same City or Town of Bristol, and to the Bayliffs of the said Mayor and Commonalty of the same City or Town in court, and to either of them. greeting: (Note this City hath divers courts within it, which causes the divers appellations).

Burgavenie,

To the Steward and Bailiffs of I. Nevill, Lord Aburgaveny of his town of Burgaveny, greeting.

Bridgewater.

To the Mayor and Bailiffes of the town of Bridgewater, greeting.

Bedford.

To the Mayor and Bailiffs of the Town of *Bedford*, greeting.

Bridgenorth.

To the Mayor and Burgesſes of our town of *Bridgenorth*, greeting.

Boston.

To the Mayor and Burgesſes of our burrough of *Boston*, in the county of *Lincoln*, greeting.

Barnstable.

To the Mayor, Aldermen, and Burgesſes of our burrough and town of *Barnstable*, greeting.

Banbury.

To the bailiff of our court of *Banbury*, greeting.

Barwick.

To the Mayer of the town of *Barwick upon Tweed*, greeting.

Batell.

To the Steward and Bailiffs of *A. Brown*, Knight, Lord Mountague, of his Liberty of *Batell*, in the county of *Suffix*, greeting.

Bath.

To the Mayor, Recorder, Aldermen, and Juſtices of the city of *Bath*, greeting.

Bodmyn.

To the Mayor, Commonalty, and Clarks of our burrough of *Bodmyn*, in the county of *Cornwall*, greeting.

Buckingham.

To the Mayor, Burgesſes, and Steward of the burrough and parish of *Buckingham*, greeting.

St. Edmonds Bury.

To our head-bailiff of our town of *Bury St. Edmonds*, and

and to our head steward of our Liberty of the burrough of *S. Edmonds*, & to every one of them, greeting.

Bewdley.

To the Bailiff, Recorder, and Burgesses of the burrough of *Bewdley*.

Bridewell.

To the Mayor, Commonalty, and Citizens of the city of *London*, and to the Governors of the Hospital of *Edward* the sixth, late King of England, to wit, *Christs Bridewell*, and *St. Thomas* the Apostle, greeting.

Beverley.

To the Mayor and Governor of the town of *Beverley*, greeting.

Beddiford.

To the Mayor, Aldermen, head burgesses, and to the Recorder, or his sufficient Deputy of the town of the burrough of *Biddiford*, and to either of them, greeting.

Newcastle upon Tyne.

To the Maior, Aldermen, and Sheriff of the town of *Newcastle upon Tyne*, greeting.

C

Cirencester.

To the Mayor, Aldermen, and Citizens of the city of *Cicister*, greeting,

Colcheſter.

To the bailiffs of the town of *Colcheſter*, greeting.

Canterbury.

To the Mayor and bailiffs of the town of *Canterbury*,

bury, and to either of them, greeting.

Coven try.

To the Major and Bailiffs of the City of *Coven try*, greeting.

Chipping-wiccombe.

To the Major, Steward and Bailiffs of the Burrough of *Chipping-Wiccomb*, greeting.

Carlisle.

To the Major and Bailiffs of the City of *Carlisle*, greeting,

Chestenham.

To the head Steward, Bailiff of the Mannor of the Burrough or Town of *Chestenham*, and to either of them greeting.

Chepslow.

To the Steward and Bailiffs of the Towne of *Chepslow* in the County of *Monmouth*, greeting.

Castle-Rising.

To the Major and Burgeses of the Towne of *Castle-Rising*, greeting:

Chipping-Norton.

To the Bailiffs of the Burrough of *Chipping-Norton* or otherwise, to the common Clarke, or Debuty there greeting.

D

Downehewot.

To the Maior, Aldermen, and Recorder of the Burrough of *Downehewot*, otherwise called *Launceston* in the County of *Cornwall*, greeting,

Doncaster.

To the Maior and Recorder of the Towne of *Doncaster*

caster, and to both of them, greeting.

Derby.

To the Maior, Recorder and Burgesies of the Town or Burrough of *Derby*, or to either of them.

Downewick.

To the Bailiffs of the Burrough or Town of *Downewick* in the County of *Suffolke*, greeting.

Clifton, Dartmouth-hardnesse.

To the Maior, Bailiffs, and Burgesies of the Burrough of *Clifton, Dartmouth-hardnesse*, greeting.

Dover.

To our Constable of the Castle of *Dover*, and one of the Keepers of our five Ports, or to him that holds the place there.

E

Ely.

To the Iustice of Pleas within our Isle of *Ely*, held and assigned, greeting.

Exeter

To the Maior and Baliffs of our City of *Exeter*, and to the Bailiff in court of the said City, and to either of them.

F

Ferriet neer Shrewsbury.

To the Steward and Bailiffs of the Liberty of *Ferriet* behind the Towne of *Shrewsbury*, greeting.

Fleet.

To the Warden of the Prison of the *Fleet*, or to him holding

holding the place, or to him holding the place there.

G

Gilford.

TO the Maior of our Towne of *Gilford.*
City of Gloucester.

To the Maior and Sheriffs of our City of *Gloucester*, greeting

Graveſend and Milton.

To the Maior, Iurers and inhabitants of the Towne and Parish of *Graveſend*, and *Milton* in the County of *Kent*, greeting.

H

City of Hereford.

TO the Maior of our City of *Hereford*, greeting:
Hebſon.

To the Maior and burgesſes of our burrough of *Hebſon* in the countie of *Cornwall*, greeting.

Haveringe.

To the Steward of our mannor of *Havering Athowrie*, greeting.

Higham-ſerries,

To the Maior and Aldermen of our towne of *Higham-ſerries*, and to either of them, greeting.

Hertford.

To the Maior and head burgesſes of our burrough of *Hertford*, and alſo to the Steward in court of Record there, greeting.

Huntingdon

Huntingdon.

To the Maior and Bailiffs of the towne of *Huntingdon.*

I

Ipswich

To the Bailiff of our town of *Ipswich* in the County of *Suffolke*, greeting

Great Innemouth.

To the Bailiffs of the towne or Burrough, and Liberty of *great Innemouth*, greeting.

K

Kingstone upon Hull,

To the Maior and Sheriff of our towne of *Kingstone upon Hull*, greeting,

King stone upon Thames

To the Bailiffs of our own Towne of *Kingstone upon Thames*, and Steward of the Towne-court there, and in the absence of the said Steward, to the bailiffs and Recorder of the said Towne, or to two of them.

St. Katherines next the Tower,

To the Steward of the Masters, brethren, and Sisters of *St. Katherines* behind our Tower of *London*, in court there, greeting.

L

Lincoln.

To the Maior and Sheriffs of the City of *Lincolne* and to either of them.

Ludlow.

To the Bailiffs of the towne of *Ludlow*, greeting.
Lichfield

Litchfield.

To the Bailiffs, Burgesſes, and Citizens of the City of *Litchfield*.

Kings Lenne.

To the Maier and Recorder of the Towne or Burrough of *Kings Lenne* in the County of *Norfolk*, and to either of them.

Kings Lyn.

To the Maier of our Towne of *Kings Lyn*, in the county of *Dorset*.

Leiceſter.

To the Maier, Bailiffs, and Burgesſes of the Town of *Leiceſter*, greeting.

Lidford.

To the Maier and Burgesſes of the Burrough of *Lidford*.

M

Maidſtone.

To the Maier of the Towne and Pariſh of *Maidſtone*.

Monmouth.

To the Maier and Bailiffs of the Towne of *Monmouth*.

Kings Molcomb.

To the Maier and Bailiffs of the Towne or Burrough of *Kings Molcomb*.

Mincholts.

To the Burgesſes of the Burrough of *Mincholts*, in the County of *Somerſet*, greeting.

Marleborough.

To the Maier and head Burgesſes of the Burrough

The Compleat Attorney.

3

ough of *Marleborough*, greeting.

Middleton.

To the Steward of our Court of *Middleton*, behind
Sittingborn.

N

Norwich.

To the Maior and Sheriffs of the City of *Norwich*,
and to either of them, greeting,

Newport.

To the Maior, and Bailiffs of the Burrough or
Town of *Newport*.

Northampton.

To the Maior and Bailiffs of the Towne of *North-*
ampton, greeting.

Nottingham.

To the Maior and Sheriffs of the Town of *Notting-*
am, greeting.

Newarke.

To the Maior and Aldermen of the Towne of *Ne-*
warke upon *Trent*, in the County of *Nottingham*.

O

Oxford.

To the Maior and Bailiffs of the City of *Oxford*
greeting.

P

Plymmouth..

To the Maioy of the Burrough of *Plimmouth*, gres
ting,

Plymton

Plymton.

To the Mayor, Bailiffs, and Burgesſes of the Burrough of *Plymton*.

R

Reading.

TO the Maior and Burgesſes of our burrough of *Reading*, greeting.

Rockeſter.

To the Maior, Aldermen, and citizens of our city of *Rockeſter*, and to either of them, greeting.

S

Sudbury.

TO the Maior, Aldermen, Burgesſes, and Steward of our town of *Sudbury*, greeting.

Stafford.

To the Bailiffs and Burgesſes of our town of *Stafford*, greeting.

Southampton

To the Maior and Bailiffs of our town of *Southampton*, in court there; and alſo the Keeper of our Goal within the ſame town, or to his Deputy, or to either of them, greeting.

Salreſh,

To the Mayor, Aldermen, and Burgesſes of the burrough of *Salreſh*, greeting.

Southwark.

To the Steward in court, and Mayor of the commonalty, and citizens of the city of London, and burrough of *Southwark* in the county of *Surrey*, or to his Deputy, greeting.

Shrewsbury:

Shrewsbury.

To the Bailiffs of our Town of Shrewsbury.

Stratford upon Avon.

To the Bailiff of our Burrough or Town of Stratford upon Avon, and also to the head Aldermen of the same Burrough, or Town and common Clark there.

Southmolton.

To the Major and head Burgesses of the Burrough of Southmolton greeting.

T.

Talboth.

To the Bailiffs in Court of Talboth, or Town of Bishops Lenne, greeting.

Tavestock.

To the Steward or Bailiffs in Court of the Earl of Bedford, his liberty of Tavestock, greeting.

Totnes.

To the Major of the Burrough of Totnes, greeting,

Tower of London.

To the Constable holding the place of the Tower of London, and also the Steward of our Court there, greeting.

Truro.

To the Major and Burgesses of the Burrough of Truro in the County of Cornwall.

Trematon.

To the Steward of Trematon in the County of Devon, or to his Deputy, holding the place there, greeting,

F

Torrington.

Torrington.

To the Major, Aldermen Burgeſſes, and Stewards
of the Burrough, or Town of great Torrington.

V.

Uske.

To the Major and Bailiffs of the Town or Burrough of Uske greeting.

W.

Wallingford.

To the Major and Burgeſſes of the Burrough of the Town of Wallingford, greeting.

New Windsor.

To the Major, Aldermen, Bailiffs, and Stewards of the Burrough of New Windsor, in the County of Berks, to either of them greeting.

Woodstock.

To the Major of the Town of New Woodstock.

Wye.

To the Steward in Court of the Mannor of Wye in the County of Kent greeting,

Witterol.

To the Bailiff in Court of Witterol, greeting.

Winchester.

To the Major, Bailiffs, and Commonalty of the City of Winton, greeting.

Worcester.

To the Major, Recorder, and Aldermen of

our City of *Worcester*, greeting.

Wenlock.

To the Bayliff and Steward of the Town and liberty of great *Wenlock*, greeting.

Wigmore.

To the Steward and Bayliff of the Town and Burrough of *Wigmore*, in the County of *Hereford*, greeting.

Warwick.

To the Bayliffs and Recorder of our Burrough of *Warwick*, greeting.

Westbich.

To the Keeper of our Prison and Castle of *Westbich* or to his Deputy there being, greeting.

These are the severall titles of severall Corporations which happily may some of them alter in some particular, by reason of renewing their Charters, and having larger Grants, by which they are incorporated anew, & which may alter the title, of which the Attorney must the best he may, inform himself.]

Some few rules have been omitted, which concern what hath been premised concerning Actions of debt. & may be of much use in other actions; which take as followes, & first of Amerciaments, and of the Estreating of them.

NOte that if the party be arrested, and at the return of the writ the Sheriff return (that he hath taken the body of the Defendant which he hath ready, &c.) and yet the Defendant appears not, you may if the Sheriff will be so content, take the bond of appearance given to the high Sheriff, & have it assigned to you, and so you shall be enabled to sue the

the Defendant and his Sureties in the high Sheriff's name, or if you will not so do, or the Sheriff will not let you have the Bond, then you must give the Sheriff a day by rule to bring in the body &c. in the Prothonotaries remembrance, which if he do not, he shall be amerced, and then he may sue out an *Habeas Corpus*, with the Prothonotaries Clerke, and if he bring him not in upon that, you shall continue the amercing of him, and in case the Sheriff return that he is (*Languidus in persona*) That is to say, that he is so sick he cannot bring him, then if it be found a delinquency, issues forth a *Duces tecum* &c. and still upon the amerciaments you shall increase issues until you force an appearance: But you may have your *Habeas Corpus*, and also give your rules for amercing the Defendant as well in the Philizers, as the Prothonotaries Office.

When you come to the estreating of your amerciamentes you must see them entred with the Philizer or Prothonotary where the Rule was given, and then the Clerk of the Warrants through whose office the Prothonotaries passe, whereby he may take notice of the Defendant his (*Misericordia*) or being in mercy upon Judgements, will certifie the amerciaments as he doth all other of that nature of course into the Exchequer; but if it be in the Philizers office, you must get a certificate from the Philizer to the Clerk of the Warrants, who will return it into the Exchequer where the Sheriff shall, when he passeth his account, be enforced to pay it.

NOW if the Sheriff who made the arrest be out of his Office before you make your proceedings, have appearance, you shall have a Writ called a *Distringas nuper vice comitem*, that is to say, a distraining of the late Sheriff, which Writ must be made

of that Office whence the last proceedings were
d.

Note, that every Attorney, Clerk, or Officer of
the court, may have an attachment of Privi-
ge, which is to be made in one of the Prothonoto-
ry office, & must be made returnable at a day cer-
tain, and is as effectually on their behalfe as an origi-
nal, for if the debt be fineable you save the fine, and
though the debt be small, or that it be any other
condition, yet shall you hold him to speciall Baile, and
upon a Capi returned, you may proceed to amerce the
defendant, as is in other Proccesses..

Note, that if you cannot arrest the party upon
your first process taken from the Phillizer, you
must be sure to see them so carefully continued,
which costs you four pence for each Term from the
time of taking them forth, for if upon a second writ
the Defendant finde your writ discontinued he may
obtain a discontinuance, & the want of any one con-
tinuance is Errour at the time of the Judgement.

Note that when you deliver unto the Defendant
this Attorney, the copy of your Declaration, you
must shew your Bond, Bill, Will, Letters of Admi-
nistration, Indenture, or other Writings under seale,
whereby you intitule your selfe, and this, for that you
are (*A Perfect hic in Curia*) of these Writings in
your Declaration, which is in substance an acknow-
ledgement of them to be brought into court, but if
the Defendants Attorney receive the Declaration and
call not for sight or hearing of the Bond, &c.
after pleads or takes an imparlance, you are

not bound afterwards to shew it him.

OBServe further, that if you bring your Action against two or more for one debt due upon one specialty, when you draw your (*Precipe*) for the currsiter, take heed whether your specialty be jointly or severally; Jointly thus, (we binde us our Heirs Executors, &c. or (*Obligamus nos heredes, &c.*) not having therein the word either of us, then your original must be, and so your Declaration (that they render to the Plaintiff so much money, &c.) but if the specialty be, as is most usuall, jointly and severally then must your *Precipe* be severall, and then must you make delivery, and enter so many severall Declarations, as there are Defendants in your Writ.

NOTE that in actions of Debt upon *Emisset*, for Wares or Merchandizes, or other things upon *Mutuatus*, for money or other things lent upon an *In simul computasset*, Actions of Trespass, Battery, or upon the case, &c. you are not tide to lay the certain day; but you may lay it any time after the cause of Action accrued, and before the Testimony of your Original, but in an *Ejectione firme*, the date of the *Dumile* must be your guide, from which you may not vary.

NOTE that as I said before, there are some Actions real, some personall, some mixed, whereof some are locall, as tied to be laid in the County where the cause of action accrued; every personall Action is an Action of Debt; Trespass, Covenant, Battery, &c. may be commenced and layd in any County whatsoever, according as the Plaintiff pleaseth, although both the Plaintiff and Defendant

Defendant do well out of the same; But every real and mixt action is to be laid in the same County where the cause of the said action arises as before, or where the Lands and Tenements do lye, &c.

The like course must be taken to continue an issue joyned and entred upon the Roll from term to term, as before was shewed in the case of imparlance.

NOte that when you declare upon severall specialties, in the close of your Declaration upon the (*Profect. hic in cur*) you must mention their severall dates.

NOte also, that if severall Defendants appear by one Attorney, who are bound in a bond jointly and severally, if they declare severally against them, yet the condition must be recited but in one of the Declarations; but if they appear by severall Attornies, you must insert the condition of all the declarations.

ANd note that in many of the foregoing actions of Debt, you shall do very well, it is the safest way for your Client to make actions of the case of them by *Indebita assumpsit*, where if you prove the money lent, or wares delivered, &c. the law implyes the promise, and in that case the Defendant is barred from waging his Law.

ANd note further, that if you bring an action of debt, against one within age, he may plead in bar that he is within age, but in case it be for necessities, as Meat, Drink, Apparell, &c. there is no bar to the Plaintiff.

And in case any one is sued who is within age, he must defend himselfe by his Guardian, and if he will

sue, it must be his Prochein amie, or next of kindred.

NOte, that you may sue an Heire as well as the Executor or Administrator for the debt due by the Obligor; but in case you cannot finde any lands to discent unto him, he pleading *Vnus per discent* (that is, hath nothing discented unto him) he shall not be charged.

If money be payable upon demand, there in that case it must be demanded before you can sue, and the Plaintiff may lay a demand in his Declaration, and the action accrues by vertue of that demand.

NOte, that if a man may bring an action either upon Bond, Bill, or otherwise, upon which he formerly had judgement, the Defendant may plead the former judgement in Bar, and it may be held good.

NOte how and to whar cases you may plead the Statute of Limitations, which will guide you to bring your actions within the time limited, or to cause you to forbear bringing them at all, all actions of Debt, Account, Detinue, Trespasse, Replevin, & all other actions of the case, unless for words, must be put in suit within six years after the cause of action, all actions of Assault and Battery, and Imprisonment, are to be put in suit within foure years after the cause of action, & all actions of the case for scandalous word within two years after the words spoken, if in any of these cases they be brought after the time limited as above, the Statute of 21. *Jacobi* pleading is a good plea in bar to any of them, no time limited for specialties,

If a man arrest another, or cause him to be arrested in another mans name, without the consent of the Party in whose name he is arrested, the Statute gives an Action of Debt to the Party so arrested.

An Action of Debt lies by the Statute of 2. Edward the 6. Chp. 13. for a Parson against his Parishioners for not setting out of tythes, upon which action the Parson shall recover the treble value of the tythes so carried away untythed.

An action of Debt by the Statute of 32. Henry 8. Chapter the 30. lies against an Attorney for not filing of Warrants of Attorney, in the Causes he is towards.

Where no place of payment is set down in a bond, where the Obligor must be enforced to finde out his Obligee to pay him the money.

We now proceed to actions of Detinue, wherein we shall need to say the lesse, for that the same rules that have been given in actions of Debt, either in relation to the process, or the manner of declaring, do hold in this, the one being in the debt & detinet, & the other the detinet only: And this action properly lies where a man delivers Goods or Chattells to another to keep, and the party to whom they were so delivered, refuses to re-deliver them,

And observe that in this action of Detinue, you ought to ascertain the thing, as a Horse, Cow, or other Chattell or Chattells, naming them, and making them certain, for that the Plaintiff is to recover the thing detained, and therefore it must be so certain, as it may be known; for money delivered, an action of Detinue lies not, but an action of account, and your Originall in this action runs thus.

THE Keepers, &c. To the Sheriff of H. greeting, command I.G. lately of L. in the County of H. Yeoman, that justly, and without delay he render to T.B. one Cow, which he justly detains, &c.

If for a mans Evidences of his Land, in a Box or Bag sealed up, in which case also an action of Detinue lies, then the Writ runs thus.

THat justly & without delay he render him one Box, with Deeds, Writings, and other Minutments in the same Box contained, which he unjustly detains, &c.

The Defendant hath not in this action that variety of Plea as before in debt, the most usuall Plea being (that he detains not the thing sued for) and upon this he puts himselfe upon the Countrey to be tried, and the Plaintiff in like manner, &c.

Note that in this case, if the Plaintiff have a verdict, his Judgement is a recovery of the thing detained, or the value thereof; in which case, as also where the Judgement is had by default for want of pleading, there is after the Judgement had, a writ of Inquiry awarded, to inquire of the value of the thing detained: Upon the return of which Writ of Inquiry, what value the Jury find the thing of, & what damages they give him for the detainer of it, is together with increale of costs entred up for Judgement.

Note that a man may wage his Law in an action of Detinue, as formerly in debt was shown, where in the same course for the manner of the waging of Law, is to be observed as before.

But it is otherwise in case you declare for one Evidence in speciall, delivered by the Plaintiff to the

3 Defendant; in this case the Defendant shall not wage his Law.

Note that in case of Evidences detained, it is not proper for the Executor, nor hath he any right to this action, but the Heire who is to have the Lands.

Note that if it be of any thing delivered to be kept whether by the immediate party that brings the action, or his Father, Ancestor, &c. Properly this action lies if detained, but otherwise an action of Trover and Conversion.

In the next place wee come to Actions of Account.

THis action lies upon severall occasions, as against one that is Guardian in Socage, against one as receiver of moneys, either by way of rents or otherwise, or as Bailiff of an Office, or as Bailiff in General: In all which cases, you must be sure to frame your action rightly, by informing your selfe for what time he continued Bailiff receiver, &c. of what his charge was, and what it amounts unto, and when he entred upon such his charge.

To begin with Guardian in Socage, your procees are by Summons *Capias ad computand. &c.* And you declare upon the Statute of Marlebridge, the eighteenth Chapter, of a Plea, that where as by the common Counsel of the Kingdome of our Lord King of England; It is provided for, that the Guardians of the Lands and Tenements, which are held in Socage, should render their reasonable account of the Issues and Profits of the said Lands, to the Heirs of the same Lands and Tenements, when they come to full Age, &c.

They

The intendment of Bailiffs, one that hath the administration & charge of Lands, Goods or Chattels, to make the best benefit for the Owner; against this Person properly lies an Action of account, for the profits which have been made or raised, during the time he hath had the care of them.

And observe this, that a Bayliff may be charged to account, and accordingly doth account, and upon account, nothing doth appear to be arrear in his hands, but rather the Plaintiff indebted to him, in which case the Bailiff shall bring his action of debt, for the surplussage of what he hath expended and laid out over and above his Receipts.

If I appoint a man to receive money to my use, to render me an account, I shall have my action of account against him for the said moneyes, he also having his reasonable Expences and disbursements.

Where a man declares against one as Receiver of monies, & he must ascertain by whose hands the money was received; which lies not against a Bailiff, and if the Receipt be from any hands, other then the party Plaintiff, the Defendant shall not wage his Law, but if it be alledged to be received by his own hands, and not by another mans hands, in this case the Defendant may wage his Law.

Where there be two Copartners in Merchandize, that occupy and Merchandize in Common, by the Statute, one shall have his action of account against the other, they being both named Merchants.

Where there be two Joynt-Tenants, and the one makes the other Bailiff of his Money, in this case, he that makes the Bailiff may bring his action of account.

The Executors of a Bailiff or Receiver, are not chargeable with an account.

An Account may be brought against the Collectors

lectors, for money given to the use of the poor.

Note that if a man brings his Action of Account against one as Bailiff, and the Defendant to his action pleads, that he was never his Bailiff to render an Account, &c. And upon that Issue joyned, and upon the tryall a Verdict for the Plaintiff; in such case the Judgment is, that the Defendant shall account with the Plaintiff of the time and profits aforesaid, &c. And that he be in mercy, because he did not sooner account.

Upon this Verdict and Judgement, the Court assigns Auditors, before whom the Defendant is to account upon such a day or time, as the Auditors shall appoint to hear the account; and in the *Interim* the party either puts in Bail to account, or otherwise stands committed to the Fleet.

Note that if the Defendant acknowledge the action, and that there be Auditors assigned by the Court, in this case he shall not be enforced to put in Baile.

There are two Pleas most usual in these actions of account, the one is (that he was never his Receiver, &c.) and the other (that he hath fully accounted, &c.)

Note that the Auditors assigned by Court, have power upon his accounting, to make him allowance of what reasonable Disbursements and Charges he brings in, as laid out, and if after the Defendant be over and above in arrear found by the Auditors, the Plaintiff may bring his action of Debt, to which as is before said the Defendant shall not wage his Law.

In an action of account a man may plead doubly, as where he stands charged to have received severall moneyes, severall times from divers persons, there

there he may plead as to part (that, he stood not Bailiff, &c.) and as to the other part) that he hath fully accounted, &c.) Upon the joyning of which Issue, it being double you say; therefore as to the trying aswell of this Issue as the aforesaid other issue formerly joyned, command is given to the Sheriff, &c.

Note that an Action of Account lies against a Church-Warden after he is out of Office, by the succeeding Church Warden to be brought.

Where an Infant within the age of fourteen years, being seized of Land in Socage Tenure, a Stranger enters into the Lands of the Infant, and takes the Profits of the same, though he be not the next of kindred, nor Guardian in Socage; yet the Infant shall charge him as Guardian in Socage; and it is no Plea for him to deem that he is the next of kindred, but he must answer to the taking of the profits, the writ being that he should render his reasonable account of the issues and profits coming to the Lands and Tenements in S. which are held in Socage, &c.

Note that if it be for the profits of the Land, for the time after the Infant is come to fourteen years of age, he must be sued as Bailiff, and not as Guardian:

Note also that if any man have cause of action of account, against any as Receiver and Bailiff, and dye, his Executors shall have this action.

This action may likewise be brought in the County where the cause of action arises, and if so brought, it may be removed into the common Bench; at the Suit of the Plaintiff by a *Pone*, without shewing the cause in the Writ, but it shall not be removed at the Suit of the Defendant, without shewing the cause in the Writ of *Pone*, as if the Defendant have release and

and then it shall be named in the Pone, &c.

An Apperatrice shall not be charged with an action of account, but if a man have a Servant whom hee commands to receive money, the Master shall have a Writ of Account against him if he were his Receiver.

The Fees incident to this Action, and the proceedings thereupon, follow in a table amongst others.

Actions upon the case.

THESE Actions are very numerous, and grounded upon severall occasions, as for scandalous words for promises not performed, for speciall Nuisances, &c. The Process upon them are, first an Originall, and then by way of *capias*, if you can arrest upon the first Proccesse, if not, then you may proceed to the Outlawry, as before in debt, onely the charge will be more in respect of the length of your Proccesse, and for returne of those Writs, you must returne (that the Defendant hath nothing within my Bailiwick whereby he may be attached) this for the Originall: And for the *capias*, and other Proccesse (that the Defendant is not found within my Bayliwick.)

In Actions of the case for words, you must carefully observe what the nature of the words are, what they import, the manner of speaking of them, and what the party Plaintiff may be any wayes damnified by the speaking of them, what his credit was, and how impaired, and take the whole words as neere as you can; and before you bring your Action, let the Witnesses set downe the words as they were spoken, and as they will be able to prove them, and the time and place when & where they were spoken, & before whom; this Action oftentimes miscarries, by reason

reason the Attornies weigh not well whether the words be actionable or not, and many times though some part of the words taken by themselves may be actionable, yet the subsequent words may qualify the sense of the precedent; as where a man sayes of another, that he is a thiet, & hath stoln something of small or no value: For generally where one stand charged by words for any theft, which is only criminal, & nor capital, there the party Plaintiff shall never enter Judgement, although he brings his Action.

An action of the case lies against the Husband and Wife for words spoken by the Wife, but in case the Wife be arrested, and not the Husband, you cannot declare.

This Action lies in these several cases following.

WHere one becomes Surety for another, at his instance & request, upon Bond, & he saveth him not harmlesse, but the Surety is enforced to pay the mony, in this case he may bring his action upon the case, wherein he must recite how such a time at such a place, at the instance and request of the Defendant, he became bound to such a one in such a sum, conditioned for the payment of such a sum at a day then to come, and that the Defendant in consideration thereof did assume and promise to save him harmlesse; that notwithstanding the promise aforesaid, he hath been used by the Obligee, and shew how and where and what he is damnified.

It lies where a contract is made between two by word of mouth, either for the delivery of Com, Cattel, or any Merchandize, whatsoever, and the party that promises so to deliver it makes breach.

It lies for mony borrowed, when you would make sure

sure the Defendant should not wage his Law.

NOte that in all Actions of the case upon special promises, you must be sure to lay a good consideration to ground your promise on; otherwise it is said to be *Nudum pactum*, as where it is for money owing by a stranger, and his Friend promises payment upon forbearance; there you must lay, that whereas such a one was indebted to the Plaintiff in forty pounds, and that for the more speedy obtaining of the said Debt, the Plaintiff intended to implead him, and that in consideration the Plaintiff would forbear to sue or implead the party owing the money for such a time, the Defendant himself would pay it, in case the other did not.

It lies for money promised in consideration of marriage, wherein the Plaintiff must aver, that he married her such a time.

To call a man a Bastard, if he be the eldest Son, & in a capacity at the time of the words spoken, to inherit an estate after his Father and be disinherited, an Action lies.

To call a maid whore, or to say she hath a Bastard, whereby she loseth her pretermen in marriage, is likewise actionable.

To call a married wife whore, would not formerly hold action at common Law, but in London by custome it hath; but Quere, whether it will now be actionable in respect of the Statute, that makes the crime capital.

If a man speaks scandalous words of any, for which is action brought against him, if the Defendant be able to make proof of the words spoken, he may plead a special justification; but if he plead such plea, and make it not good, the damages will be much aggravated thereby.

If the Defendant spake other words then what are layed in the Declaration, he must plead especially, and traverse the word laid in the Declaration; but quere, whether both cases by this late act, he may not plead the general issue, and give the special matter in evidence.

Where the Defendant pleads the general issue, which is not guilty for words scandalous, &c. there rests on the Plaintiffs part, to prove the words as he hath laid them.

It hath been usuall, and yet is the course to arrest upon a *Clausum fregit*, & then upon filing a new Original, to declare specially in an action of the case.

It lies for the hire of a horse which is returned back, and the hire unpaid.

It lies likewise, where a man abuseth a horse by immoderate riding, or otherwise by misusing of him.

The partie likewise that hires a horse, if he have given earnest for the horse, and that it be promised him, it shall be delivered unto him by such a time, & then he refuses to deliver him, whereby he is disappointed.

It lies for the Master against his servant, for leaving of his service, before the time contracted for be expired.

Likewise for a servant in case the Master without just cause shall turn him out of service, before the time be expired.

It lies for a mutuall contract made between two, by word of mouth, and to bind the same, a piece of money is given by the one to the other in earnest; now if either will not perform what is agreed upon, the other may bring his action of the case.

It lies where a man upon sale of sheep, warrants them to be sound, and they prove rotten, or otherwise unsound.

An Action of the case lies where one sells a Horse, and warrants him to be sound, and the Horse proves to be unsound at the time of the sale.

It lies against a Farriar, who shoes a Horse and ticks him, whereby he grows lame.

It lies where a man who is a Goaler, lets a prisoner at large, and this aswel as escape.

Where a man hath made a distress of Cattell, and is driving of them to the Pound, and another comes and rescues them, an Action of the case lies.

It lies against any that shall intice his Covenant-servant from him.

If a man lose Goods brought into a common Inne, or Hostry house, an Action of the case lies.

If a man deliver Goods to a Carrier, and agree upon the rate for carrying, and they are lost & miscarried, an Action of the case lies.

It lies for stopping of a water-course through his Ground, whereby the Plaintiff watered his beasts and did other necessities, and if this be stopped either by stones, Turfes, or otherwise diverred, an Action of the case lies.

If a man stopp up a way, whether Cart-way or Foot-way, and another hath right to that way, & can prescribe to it, an Action of the case lies.

Where a man is to pay money, and gives a Bil of Exchange which is not execepted, but afterward comes to be protested, an Action of the case lies.

Weere a man sels another mans Cattels or Goods, or Merchandizes, & warrants thm to be his own, an Action of the case lies.

An Action of the case lies against a Taylor, who doth undertake to make cloaths and spoils them, so that they are not usefull for the party they are made for.

It lies against an Executor upon the promise of a Testator, provided there be a consideration to ground the promise on.

It lies in the behalfe of a Commoner against a Lord that hinder him from the use of his Common.

Where a man hath an Office granted unto him, and another either disturbs him in the execution of his place, or otherwise receives the profits due to the Office, an Action of the case lies.

It lies against a cheat, for playing with false Dice.

Where a man disturbs the keeping of a Court Leet, an Action of the case lies.

It lies against an under-Sheriff for an ill or false return.

It lies against an unders-Sheriff, who makes return of Writs within any Liberty granted to another.

It lies on the behalfe of a Physician or a Chyrurgeon for Physick or performing a cure.

Where a man builds a house so neer his neighbours, or raises any shed or other out-house, or lays piles of wood, or stocks of hay or corn so neer his neighbours window, as that they stop up his light, an Action of the case lies.

And for any other nuisance, whereby a man is unlawfully damnified, as where a man builds a Stable or Privy-house so neer his neighbours house, that the smell thereof annoyes him.

It lies against an under-Sheriff, for taking greater Fees then is allowed by the Statute.

It lies against one who shall breake down a wall or Sluce, whereby his Land comes to be drowned.

It lies for selling corrupt Wine without warranting it to be good, for that it is prohibited by Law.

It lies where a man hath pawned goods and taken

It lies for the money due, and demands his goods, and it shall be acc. pred.

It lies for not carefully keeping fire, whereby a mans wife who is a neighbour comes to be burned either part or whole.

It lies for digging of Lime pits.

It lies against one for keeping a dog that worries sheep.

It lies for a Solicitor for his Disbursements and fees.

It lies so many severall wayes for promises, as that they are not to be named in particular, but are to be taken as the case falls out; only observe some particulars, following.

It lies where a man for money lent, upon forbearance; and promises to become surety.

It lies upon a promise to pay money for Land contracted for.

It lies against any one that makes an arrest in a liberty, not being a Bayl ff.

It lies for the Lord of a Mannor in ancient demesne against a Tenant that levies a fine above in the Common Pleas.

It lies in the nature of an action of conspiracy, for one indicted of Felony, and afterwards acquitted.

It lies against a Steward of a Court for not taking security in Replevin.

It lies against the Husband and Wife for meat, drinke, &c. had by the Wife before the intermarriage.

It lies for the keeper of a prison for meat and drinke sold by a prisoner.

It lies against an Attorney or Clarke of the Kings Bench for appearing or filing a bayle without Warrent.

It lies likewise against an Attorney that shall any act in any mans name, where by the party is prejudiced in relation to the Law without Warrant had.

It lies for erroneous prosecuting a Writ of Execution.

It lies also against an Officer, who takes money extortion.

It lies for rescue made upon a *Capias*, or other proceſſe whatſoever.

It lies against the Sheriff for not returning a *Verdicti* *exponas*.

It lies likewise on the behalfe of an Executor against an under-Sheriff, for returning faulſly a *Deſervavit*.

If a man ſells cloathes, and warrants them to be of ſuch a length, if they hold not out accordingly, which buyes them, may bring his Action upon the ſale.

If one take a mans Cattell, and others take the ſame from him, an action of the caſe lies, by way of Treſpaſſe and conversion for the cattell.

An action of the caſe lies againſt Tenant or wife who commits waſt by burning houſes or pulling them down, but not an action of waſt.

An action of the caſe lies againſt a Bailiff for killing or ſpoyling any of his Maſters cattell.

If a man deliver to another his ſheep to dung his Land, or his Oxen to plow his Land, and he kills them, an action of the caſe lies.

An action of the caſe lies againſt a Sheriff where the Plaintiff hath a Charter of exception, that he ſhall not be impannelled upon any Jury, and yet he returns that to the Sheriff, and yet he impannels him.

If the Sheriff upon a Writ of ſecond deliverance return to the plaintiff of the diſtreſſe, and will not return the

Writ, so that the Defendant may constrain the Plaintiff to come & declare, so that he may avow, the Defendant shall have his remedy by action of the case against the Sheriff.

Action of the case lies against a Sheriff, where he makes a *Precipe* to one who is no Bayliff of the Franchise, who returns a Jury which is quashed, to the damage of the Plaintiff.

Where a Guardian pleads falsely for an Infant, or vouches one who is not sufficient to render in value to the Infant, the Infant shall have an Action of the case.

An action of the case lies against a Chyrurgeon who undertakes to cure a man of a Wound, and neglects it, whereby a man grows worse, and makes it through his negligence incurable.

Where a man promises in consideration of an hundred pounds, or any other som in hand paid, to enteeff another in such or such Land, by such a day, and doth it not, he shall have an Action upon the Case.

There are many other cases wherein Action of the case lies, which cannot be certainly recited, in respect of the various occasion of them; but in these before recited, and all others, the proceed is one and the same; onely your Declarations must vary as your Case requires; after your Declaration drawn, upon appearance made, you deliver it to the Attorney for the Defendant, and most usually with an *Impar lance*, which done you enter it accordingly that Terme you deliver your Declaration, upon one of the Prothonotaries Rolls, and then Docquet it, and keep the number Roll by you, whereby you may be able to continue your *Impar lance* if need be.

The Term following you give a Rule within some short time of the beginning of the Terme, with the

Secondary of the Office for the Defendant to plead by such a day, or otherwise the Plaintiffe have Judgement.

There is not much diversity of pleading to this Action, especially since the late Statute; the most usuall Pleas are either Not guilty, or in case of promises, Non assumpsit.

Either of these being pleaded, you make up a Copy of the Issue, and deliver it to the Defendants Attorney, who is to pay for the Copy of the Issue, as before for the Declaration, four pence for every sheet, and also to pay for his entring his plea two shillings; that done, if you intend to try it, you must give warning to the Attorney of the Defendant when you intend to try it, & in order thereunto make out your *Vener Facias*, and get it returned by the Sheriff, and then set out your *Habeas Corpus*, and so proceed to the making of your Record; and in all other things, both before, at the tryal, and after, as you are directed before in the case of Debt.

But in case they plead not, but let it go by default, then upon entring up of your Judgement, you are to award a Writ of Inquiry of damages, returnable, some return the Terme following, which done, you make out your Writ, and procure it to be signed with the Prothonotary, and then seal it, and be carefull to keep your number Roll likewise of your Judgement, when you have Docquetted it.

Note that you are to give notice to the Attorney of the Defendant of the time when you intend to execute your Writ of Inquiry, if you practise fairly.

And having so done, and brought your Writ under Scale, & delivered it to the Sheriff, you may proceed upon it according to the time agreed on.

The Sheriff to summon an Inquest, who are to in

Inquire what damage the Party Plaintiff hath sustained, as also for his costs and expenses of suit.

The Inquest having passed, if the Sheriff draws a short schedule, and annexes it to the writ of Inquiry, and returns the Writ of Inquiry, which is called an Inquisition, which he delivers you upon payment of his and the Juries Fees.

Having your Writ of Inquiry thus returned, and the Inquisition annexed, you must bring it to the Prothonotaries Office, and there take it out in the Bill of Pleas, together with the returne and Inquisition, and give a Rule upon it; which done, and the Rule out, you carry to the Prothonotary, and he taxeth your costs, and then you pay him for it, and carry it to the Clark of the judgements, and be sure you give him likewise your number Rol and Term, when the judgement was entred, and he will make you out either a *Capias ad satisfaciendum*, or a *Fieri facias* for your damages and costs. The Fees incident to this action, you will follow.

Action of Trover and Conversion.

THis Action is called also an action of the Case, and differs not at all in the proceedings from what hath been said before in action of the Case.

It properly lies where the Defendant hath found any of the Plaintiffs Goods, and refuseth to deliver them upon demand, or where the Defendant comes by the Goods, up the delivery of any other then the Plaintiff, wherein he shall recover as much damages as the Goods are worth.

It is not as in an action of Detinue, that the thing it selfe, whether Goods or Cartell *&c.* be recovered

ed, but Damages to the value of them.

Note that a demand is absolutely necessary to this Action before it be brought.

In this Action if the Defendant plead that he is not guilty, which is the most general plea in this Action, the property of the goods must be proved to have been in the Plaintiff, before such time as they came to the Defendant his hands.

This Action is now very usuall, and takes place in stead of actions of Detinue; for in them the Defendant was at liberty to wage his Law, whereas this debars him.

In many Cases a speciall justification may be pleaded to an Action of Trover, as where a man justified the taking of it as a Stray, and refuseth not to deliver it, being a Horse, Sheep, or the like, upon payment for their meat and keeping.

Many times in this Action, the Arrest is made upon a *Clausum fregit*, and then file a new Original, and so declare in Trover; or in case you cannot Arrest, you may sue to an Outlawry.

Where a man brings his Action of Trover and conversion against another, with whom he finds any of his Goods lost or purloyned; here if the Defendant brought them in open Market or Faire, and that they be tolled in the Book, this alters the property of the Goods, and I can never recover them, but this must be specially pleaded.

Otherwise it is where they are bought privately & not in open Market or Faire, by this there is no property altered.

It is generally held, a mans shop is said to be open Market; but if Plate be stolen and sold to any other Tradesman, or in any other shop then the Gold-Smiths to whom it is proved to buy it, it hath been held the property is not altered, but that the party
losing

losing of it, may recover the value of it in Damages by action of Trever.

All the Proceedings in this action are generally the same immediatly before going in al particulars, whether it be by triall at the Assizes, or by Writ of Inquiry; which Writ of Inquiry, Inquisition thereupon, as that also in case, are to be filed by the Clark of the Judgement, which the *Custos Brevium* after Judgement entred up.

In this action you must be carefull of the dayes when you lay the Plaintiff to be possessed, and what time after you lay it to be lost, and what time after the Conversion.

Action of Trespass and Battery.

THis action lies where a man assaults another, and strikes, kicks or beats, or dos him any manner of violenec, either with hand, foot, or with any weapon, or throws any thing at him, or upon him, whereby he he is hurt.

The Writs in Battery are by way of original, *Capias alias*, &c. If not arrested upon the first Process, you may take out a *Capias* by continuance, or otherwise sueto the Outlawry.

Your Originall runs thus: Wherefore by force and arms on him the said Plaintiff at L. he made an assault and him beat, wounded, and evill entreated, so that of his life he did despair, and other harms to him he did, to the great Damage of the Plaintiff, and against the Peace, &c.

In some cases you adde (after wounded and imprisoned) in case the Party were kept in prison, and then in the Court you name for what time.

In case you have the party arrested, you must inform

forme your selfe and the time when the Battery was done, and what the manner of the Battery was, and with what weapons, and whether the party were imprisoned, and what damage your Client sustained.

This done, and having an appearance (which is usually made on the Philizrs Roll, if the Attorneys take not one another words in the Countrey, or put their hands to the Sheriffs Warrant for to appear according to the returne of the Writ) you draw your Declaration, which is no more but a recital of the writ above, only in the second place, when you count upon the writ, you are to insert the time, and when you say by force and Armes, you then adde (that is to say with Swords, Staves and Knives) and if the party were imprisoned, you then shew how long and whether he were forced to pay a fine for his redemption; your Declaration drawn must be delivered to the Defendants Attorney, as before in case, &c. And you must enter it with an imparlance, if you give one.

And your are to give Rules, the Imparlance out, and call for answer, and make up your Issue, or for want of Pleading enter up judgement by default, and take your writ of Inquiry; in all things observing the Rules before given, either for trial or proceeding with your Writ of Inquiry.

The general Plea to this action is not guilty, but there are severall other Pleas, in justification of a mans selfe, as where it is done in the defence of mans person or goods; also a man may justify in the defence of the person of the Wife, Father, Mother, or Master: But note that if it be not in these cases, or in the maintenance of Justice, if he be not constrained by a necessary cause, he is punishable if he beat another.

The Complaint Recovery.

If a man come into anothers houses against his will, and there offer violence either to his Wife, Children, Servants, or to any of his Goods, he may lawfully thrust him away, to hinder him, and if he bring an action in such like case, he may plead specially as the case was, & conclude that to hinder him, or put him out of doore, he did (*Molliter manus imponere, &c.*) that is, softly lay his hands upon him.

To all such speciall pleas it is usuall they should be pleaded under Counells hands.

Where a man for preservation of the Peace, goeth about to part a Fray, by holding either of the parties from striking, in case the party that was so holden, do bring an action of Battery, the Defendant may plead specially, that to preserve the person of one from killing, and preservation of the publick Peace, he did come in ayd to him, and did softly lay his hands upon him.

To this the Plaintiff may reply, that he did it of his own proper injury, without any such cause, and then the Defendant must maintaine his Plea, with an (*ut prius dicit.*) And of this he puts himselfe upon the Countrey, &c.

There is a Plea called (*Son essalt Demesue*) which is where a man justifies in his own defence, as being first struck, which falls out to be very frequently pleaded. This must for Battery.

Of Trespasse, in generall.

THese are the most generall actions next actions of Debt, that are brought, and vary in the originall Proesse and Declaration, according as the
Trespasse

Trespasse is, and the cause of Action thereby accrued.

It may be brought for breaking the Close, without adding any manner of other Trespasse.

Sometime for breaking both Close and House, in which case the Originall is; Wherefore by Force and Arms, the Close of the Plaintiff at L. he brake, and other harmes to him he did, to the great damage of the Plaintiff, and against the publick Peace, &c.

You may lay it for severall Trespases at severall dayes, or one Trespasse with (*Continuando*) that is continuing of it, for some certain days or weeks, from the time laid in the Declaration.

It lies for chasing of Cattell, whereby they either died, or were bitten or worried with Dogs.

It lies for taking away of Pales, Posts, Rails, breaking of Hedges or Fences.

It lies for digging in a leaden Mine, and taking away the Ore, or for breaking the Ground, and digging there.

Where a man breaks another mans Dove Cove, & takes away Pidgeons, an Action lies.

For drawing a Cart and Horses over any mans Ground, where there can be no way prescribed for, an Action of Trespasse lies.

It lies for fishing in another mans Ponds, and for breaking the Pond, and letting out the water.

For chasing in a free Warren an Action lies.

For breaking of a Close, mowing of Grass, and eating of Corne with a mans Cattell, this Action lies.

For Trespasse done in a Garden, by plucking up
by

by the Roots Rosemary, Lavander, and other Herbs.

It lies in the behalfe of a Minister against any that hinder or oppose him, in carrying away of his Tyches.

It lies for impounding a Horse or other Catrell, & not giving them sustenance in the pound.

It lies for taking away Hay in cocks, and corn in sheafs.

It lies for taking away of Horses or any other like Catrell, wherein you say, (of the price of such, &c.) or if Goods and Chattells, then you say, to the value of so much.

It lies for breaking of the Doors, Windows, Walls, or other forces of a house.

An action of Trespasse lies, where one having right to a Toll in a Market, and imployes his Servant to gather it, and he is disturbed in it.

It lies likewise where a man hath right to keep a Faire, and is hindered.

It lies one the behalfe of one that hath return of Writs within his Hundred, and hath a disturbance by any.

And where a man hath right to keep a Court Baron, and is any way disturbed, this action lies.

For digging in a mans Cole-mines, and carrying away Coles, and for digging in a mans quarries, he shall have this action.

WE have now given you som particular hints, in what case an action of trespassse lies; I shall now proceed to the processe thereupon, which as I told you are by Original, in the first place *Capias*, in case you can arrest them, or otherwise to the Outlawry.

If you arrest the party, and have an appearance you must draw your Declaration, wherein you must be sure to take perfect notice from your Client of the day when the Trespass was done, that so you may lay it to be done before the Teste of your Original, and likewise how long the Trespass continued, that so there be occasion you may lay it with a *Continuando*, and whether there were not several Trespases at several dayes, and the place where the Trespass was done, in what town or parish, for from thence your Venue must rise.

To this action the most generall plea is not guilty, yet is there much speciall pleading by way of Justification or otherwise, but most usually, that is after the common Bar hath been pleaded in an action of Trespass, & that there be a new assignment of the place, then they plead as to the Trespass in the place of new assignment, either in justification for a Foot-way, or a Cart-way, or some other speciall Plea, &c. Or Not guilty to the new assignment: This new assignment is used very oft, to cleere a Title, which upon it comes in question; here in case the Title appear to be the Plaintiff, he shall recover Damages.

This action brings to the party Plaintiff if he recover, damages, but not recovery of any possession, as in the case of an Ejection firme.

All manner of Proceedings after the Declaration any way had, relating to this action, whether by trial of *Nisi prius*, or Writ of Inquiry, upon default or confession, are altogether the same with what hath been delivered, as to actions of the case.

Actions of Covenant.

THIS Action lies where an Agreement or compact, is by Deed, Articles, or other writing, made between two persons, where every of them is bound to the other, to perform certain covenants on his part, and if the one of them holdeth not his covenant, but breaketh it, then he which findeth himselfe aggrieved, may have thereupon a Writ of Covenant: And covenants are either in Law or in Fact.

A covenant in Law is that which the Law intendeth to be done, although it be not expressed in word, as if a man demise any to another for a certain term, the Law intendeth a covenant of the part of the Lessor, that the Lessee shall hold all his Term against all lawfull Incumbrances:

Covenant in fact, is that which is expressly agreed between the parties.

Also there is a covenant meerely personal, and a covenant that is reall, as sayes Fitzherbert in his *Quarta Brevium*, Fol. 145.

Covenant real, is where a man tryeth himselfe to have a thing reall, as Lands or Tenements, where a man covenants to levy a Fine of Lands &c.

Covenants meerly personall, is where a man covenants with another by Deed, to build a house, or to give him.

Note well that no writ of covenant shall be maintainable without especialty, but in the City of London, or in some other place priviledged by custom or use.

Note that a man may bring an Action of covenant upon a Letter of Attorney.

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Where

Where a Covenant personal is made to any, and the Covenantee dies, the Covenant being unperturbed, here his Executor shall maintain an action of Covenant.

The Heire shall likewise maintain an Action of Covenant, where one had covenanted by writing with his Father, to Enfeoff him in certain Lands, and doth it not.

The Process incident to this action is an Original which as a Summons, for in this action as a Debt, you say (was summoned, and not attached.)

Your Original runs thus, (Of a Plea that he hold the Plaintiffs covenant between them made, according to the force, form, and effect of certain Indentures between them made, &c.)

After your Original taken out, you may have a *Capias*, and if you arrest him not upon the *Capias*, you may proceed to the Outlawry, as in other cases.

Upon appearance had, you must declare as in the example following, wherein you must observe that in this action as in debt, you have an *Alias Dictum*, which must be made literally to agree with the Indenture.

Ex. II.

J. Glover, late of, &c. otherwise called John Glover, Gentleman, was summoned to answer E. M. of a plea, that he hold to him covenant between them made, according to the force, form, & effect of certain Indentures between them made, &c. & where upon the said E. by T. G. his Attorney saith, that whereas by a certain Indenture made (such a day, yeare, and place) between him and the said Plaintiff on the one part, and the said J. of the other part, which other part signed, with the Seale, of the

ame I the aforesaid E. brings here into Court, the
Date whereof is the same day and yeare : It is re-
cited (reciting the whole Indenture till you
come to In witnessle whereof) as by the same Inden-
ture more fully appeareth : And the said Plaintiffe
saith, That although he hath fulfilled & performed,
all and singular the Covenants and Grants in the In-
denture aforesaid above specified, on his part to be
fulfilled and kept, in Fact the same E. saith, That
within the aforesaid seven yeares, after the making
of the Indenture aforesaid (that is to say) Such a
day and yeare, one T.D.E. then being of the lear-
ned Counsell to him the said E. at B. aforesaid, in the
County aforesaid, did devise and cause to be written
for further assurance of the aforesaid Close with
the Appurtenances to be made to the said E. a certain
Writing of release to the aforesaid Close with the
Appurtenances to be made to the said E. by the said
J. in which said Writing it was contained, that the
aforesaid J. should remise, release, and alwayes for
himselfe and his Heires, quite claime to the said E.
and his Heires, the whole Right, Title, and Claim
which he had, or at any time from thence following
might have, of and in the aforesaid Close with the
Appurtenances : And the same E. afterwards, the
same day and yeare at C. aforesaid, did request the a-
foresaid J. to seale, and as his Decd, to deliver to
the said E. the aforesaid Writings of release in forme
aforesaid devised, and the aforesaid J. that to do,
then and there altogether refused, against the forme
of the Indenture aforesaid ; yet the said J. although
often required, hath not held the Covennat aforesaid
(for that, that he the said J. and his Heires, and
all persons and their Heires, claiming in or by the
aforesaid J. at any time, during the space of the aforesaid
seven yeares, upon reasonable demand thereof,

to them or any of them to be made, shal make, permit
 & acknowledge, or cause to be made, permitted, and
 acknowledged, all and singular act and acts, thing or
 things, for the better and further assurance and sure
 making of the Premises with the appurtenances to the
 said E. and his assignes, as by learned counsel of him
 the said E. his Heirs or Assignes, should be reasonably
 devised, but hath broken it, & to hold that covenant
 to him the said E. hath hitherto denyed, and yet doth
 deny, whereupon he saith that he is damnified, and
 hath damage to the value of two hundred pounds, &
 thereupon he bring his Suit, &c.

Here you have an action of Covenant brought for
 making further assurance; wherein you see the laying
 of the breach, and what the further assurance is, and
 indeed the whole difficulty of an action of covenant,
 lies in the laying well the breach.

To this the Defendant pleads as follows.

And the aforesaid J. by F. N. his Attorney comes
 and defends the force and injury when, &c. and saith
 that the aforesaid E. did not require him the said
 J. to seal, and as his Deed to deliver to the aforesaid
 E. the aforesaid writing of release, for further assu-
 rance of the aforesaid close with the appurtenance,
 to the aforesaid E. to be made, as the aforesaid E.
 by his Declaration aforesaid above hath supposed, &
 of this he puts himselfe upon the Countrey, and the
 aforesaid E. in like manner; therefore command is
 given to the Sheriff, that he cause to come here on
 the morrow after the holy Trinity, twelve, &c. by
 whom &c. and who neither. &c. to recognize, &c. Be-
 cause as well, &c.

Observe by this issue you see joyned, that where
 the Defendant takes issue, you say, (and of this he
 puts himselfe upon the countrey) & and where the
 Plaintiff

‘iff take the issue, you say, (and this he prayes may be inquired of by the country.)

In this action you recover damages assessed by the Jury for what you are damnified, by the breach of covenant and costs of suit.

Note that an Administrator may have an action of covenant as well as an Executor, and the writ of covenant ought to be brought in the County where the Deed is made; but if it be brought in another County then where the Deed was made, the party Defendant shall not have a Plea in Bar to the Writ, unlesse that the deed bare date in another County.

A writ of covenant also lies against Pledges, who become sureties that another man shall perform a covenant.

The Assignee of the Lessee shall maintain an Action of covenant against the Lessor, although he be not specified in the said deed of covenant to be an Assignee.

HAVING given you before an issue joyned in an action of covenant, you are (in case you proceed to tryal) to make out your *Venires facias* as in others with this difference, onely that you say, [of a plea of covenant broken] and then your *Habeas corpus*, and the rest of your proceedings in order to a tryall, as before in other actions.

But if after your imparlance and rule being out, the Defendant plead not, you must take your Judgement by default, which is to be signed by the Prothonotarie, & then you are to have your Writs of Inquiry, which be awarded upon your Judgement-Rol, and signed by the Prothonotary.

There may be one or more breaches assigned, as the case may require.

But in an Action of Debt upon Bond for performance of Covenants, he can assigne but one.

NOW because within the title of that covenant real, fall Writs of Covenant, it will not be amisse to insert here the form of suing out a fine.

And first, how to acknowledge a Fine at the Bar in Court.

IN the first place you are to take notice, that it is in the parties Election, whether they will acknowledge a Fine in open Court or before the Lord chiefe Justice of the Common Pleas, at his Chamber or else where out of the Court, as before some Judge of the same Court, or before the Justices of Assize in the Countrey, when they go a Circuit, or before Commissioners in the Countrey, by vertue of a speciall *Dedimus Potestatem*, to give them authority to take the knowledge thereof, none of all whole saving the Lord chiefe Justice having power to take without *Dedimus &c.*

If the acknowledgement be to be made in open court you must have your Writ of Covenant made by the Curfitor, & there compounded it at the Office of Alienation, where it must be likewise Indorled and entred, and so fitted for the Seale, to which must be annexed the *Precipe*, and concord in Parchment, which you must deliver to some one of the Sergeants at Bar to draw it for you, and then you pay him three shillings four pence, the other Fees payable in Court are certain and are not great; for by the acknowledgement in Court, the Client saves divers Fees and charges which otherwise the Caption would cost.

The

The Caption being past, you proceed with your *Precipe*, and concord, and writ of covenant, through the Alienation Office, Kings Silver, *Custos Brevium*, and Chirographer, as hereafter is shewed in other acknowledgements.

*How to acknowledge a fine before the
Lord chiefe Justice.*

If you would acknowledge your fine before the Lord chiefe Justice of the common pleas, out of court, first draw your *Precipe* and concord in a sheet of Paper, and then bring the parties that must acknowledge the fine to my Lords chamber, and deliver your *Precipe* to my Lords clerk of the fines, who will read it to them in presence of my Lord, and their hands being first set to it, they acknowledge it before my Lord, and he putteth his hand to it.

The fee of my Lord chiefe Justice is. 9s 8d. which being payd by you or your client to my Lords clerke, after the acknowledgement, the clerk will afterwards ingrosse the *Precipe* and concord in parchment. and get my Lords hand to that which you must fetch from him, and give him his fee for the ingrossing thereof, which is. That done, you must carry it to the curfior of the shire where the Land lies and leave it with him to make a Writ of covenant by, when the writ is made, before you passe it under seal, you carry it to the Alienation Office, where you are to pay a fine for license or leave to alien, & there it is you must make your composition, which is set by the commissioners sitting for that purpose, and that you may do it with the lesse charge to your client, you must informe your selfe of the value of the

and by year, and in case there have been a former fine, if you have it not to know the term when it was & in case you inform the value, there is one sits purposely with the Commissioners to take it, who was formerly a Doctor, you must by entreaty, perswasion or otherwise draw the fine to be set at as low a rate as possibly you may.

The value being set down by one of the Commissioners, if it exceed forty shillings, (for else there is nothing to be paid) you must go to the Receiver in the same Office, and pay the fine so assessed, which is the Kings silver, for the Kings license, which license the clerk of the Kings Silver entred, as is hereafter shewed, when the money is payd, the Receiver will set his hand to the back of the Writ, then give it to the Doctor to sign, who hath four pence as I take it for his hand, then get the hands of the two Commissioners to the back of the writ, which done, you must carry it to the clerks there sitting to be indorsed and entred.

This being done you bring back your writ to the curfitor, and he will get it sealed, and then you pay him the fee of two shillings & six pence, then having broke it open, you are to return it as followes.

Towards the upper end of the Writ thus,	} <i>John Doe.</i> Pledges of pro- securing <i>Richard Roe.</i>
--	--

Towards the middle of the Writ thus,	} <i>John Dem.</i> <i>Richard Fem.</i>
---	---

And at the lower end of the Writ the Sheriffs name,

This is now by a late erected Office done by an Officer, who takes for the doing of it, and making an entry of it, 1s. 6d.

Note, that you are to file a Warrant of Attorney with the clerk of the Warrants, where your writ of covenant must be signed, which warrant is as follows (the Shire in the margin) *G. W. puts in his place T. L. to prosecute a writ of covenant agst T. H. of Lands and Tenements in A. and C.*

That done, file your Writ of covenant and your concord which you had from Lords clerk together, and carry them to the *custos Brevium* his Office in *Lincolns Inn*, to the clerk who dealeth for that Shire, and leave them with him to enter in his Book, and to indorse the Writ. When he hath done, fetch them from him, and pay him for the same, 3s. 8d.

Then take them and carry them to the Kings-Silver Office, to enter the Kings silver, which is the fine for the value which you paid to the Receiver in the alienation Office.

The form of his entry you may see in the Rolls of the Kings silver Office, amongst the Plea Rols of any Term in the Treasury of Westminster, his fee is for entering of it 6 d. which when he hath done, you must fetch it a way, and deliver it to the Secondary in the Chirographers Office, who takes it forth in his book, and hath for his Fee 5s. 8d. if it be in the term, but if it be not in the Term, then you must give him twelve pence more, which he will have for allowing the Proclamation in the same term; that done, you must in the same Office deliver it to the clerk of the Office, who is appoinued to write for that Shire wherein the Land lies to ingross, he hath for the ingrossing of it 2s. 6d. if small, but if great, 3s. 6d. or more in case it be exemplified.

Where

When your Fines are ingrossed, which are by way of indentures, get one part from him, and deliver it your Clyent to keep.

In making up your clyents Bill, you alwayes take for your own Fee, as allowed for your pains, fix shillings eight pence.

How to acknowledge a Fine before a Judge out of Court by Dedimus potestatem.

YOU shal proceed in taking the acknowledgment and in passing the Writ of *Covenant* thorough the Alienation-Office, in like manner as is before shewed; which being done, and delivering your writ back to the cursitor, you must bespeak a *Dedimus Potestatem*, which the cursitor must make, and when you have your writ of *Covenant* and *dedimus Potestatem* under Seal; you must deliver the *Dedimus* to the Judges clerk of the Fines, and he will ingross the *Precipe* and *Concord*, as before is shewed, and return the *Dedimus* and get the Judges hand to it; which *Dedimus* so returned, *Concord*, and Writ of *Covenant*, you must annex together, and pass them through the *Custos Brevium*, clerk of the *Warranty*, clerk of the *Kings Silver*, M. Jones his Office of *Enrollments* as 'tis termed, and the Chyrographers Office in like manner, as is before shewed: The couric of proceeding and Fees being all one, more then this, that you pay to the cursitor for your *Dedimus potestatem* 9 s. 2 d.

How to sue forth a Fine to be acknowledged before Commissioners in the Countrey by especiall dedimus potestatem.

WHere in regard of the Cognizors debility of body, or remoteness from London or Westminster, or other occasion, you are to sue out a fine, and passe it by speciall Dedimus, enabling Commissioners in the Countrey to take the acknowledgement; you are to proceed as followes.

First draw your *Precipe* in a sheet of Paper, as a Note for the Curfitor to draw the *Dedimus* by, then ingrosse your *Precipe* and *Concord* in a faire piece of Parchment, and go therewith to the Curfitor of the Shire where your Land lies, and upon your *Precipe* in paper insert your Commissioners names, which must be four in number, whereof one at least must be a Knight, and get him to make your *Dedimus potestatem*, for which you must pay him and in paying of him (for he takes for them all) you pay a fine, and for a Judges hand, and for the Master of the Rolls his hand, which hands must be had before it be sealed, and then having it under seal, deliver it so, and the concord before any two of the Commissioners named in the *Dedimus*, and your Cognizors being present, let them take the *Caption* as is before shewed: Which being done, they must return the Writ of *Dedimus*, and their Execution thereof in manner and forme following on the back of the Writ.

The Execution of this Writ appears in a certaine
Schedule

Schedule to the writ annexed.

And they must write the day of the caption of cognizance underneath the concord as follow
[taken and acknowledged at C. in the county of
the twelfth day of *August*, 1650.]

Underneath the which the commissioners are subscribe their names.

Having your *Dedimus potestatem* thus returned, must file your *Dedimus* and concord together, & call them to the curfitor, for the making of your writ covenant, which having had and compounded, your proceed is as in all other fines through the several Offices.

Note, that upon every Fine past, where a Fine paid, there is within four or five Terms a *Pe* Fine, that comes in charge to the Sheriff, to levy in the county where the Land lyeth; - and that fine is as much and half as much as was paid before in the *Alienation-Office*.

How to sue forth a license of Alienation of Lands holden in Capite.

IF you levy a Fine of Lands holden in *Capite* of the Kings, you must bee driven to sue forth your licence of Alienation, for if you should enter into the Land without a Licence, the King would have a Writ of Intrusion against you, and receive all the main profits until you have sued out a pardon, which is both troublesome and chargeable: The Fine whereof divides the maine Profits betweene the Intrusion and the Pardon, and the other charges, is above a years value clearly, according to such composition

Affidavit to the undervalue, as is said before of the
 compositions of the alienation Office, unless the
 commissioners inquirie, will more favourably
 compound for the mean profits, as in some cases up-
 on reasonable cause shewed they use to do.

And your license of alienation is to be sued in this
 manner. First, you must get the clerk of the aliena-
 tion, to make you a *Dogget* in paper, which you must
 carry to the alienation Office, and there compound
 for the value of the Land, which must be also by
 deposition or *Affidavit*, as is shewed before.

The value being set downe underneath your *Dog-*
get, you must pay a third part of the value so assessed
 way of Fine for your license, which you must like-
 wise pay there in the same Office, and you must
 give the Receiver over and above what you pay, six
 pence.

Then you must there get the Doctors hand to your
Dogget, for which you must give him 2s. and you
 must then get the commissioners in the same Office,
 to set their hands to the *Dogget*, then deliver it to the
 register, there to enter, for which you must give him
 4d. And after it is entred, then carry it to the clerk of
 the alienation again, and he will get the Lord
 Chancellor or Lord Keepers hand to it, and will af-
 fordwards ingrosse your license of alienation and passe
 under the great Scale for you. The charges are as
 followeth.

The charge of acknowledging a Fine before the
 Lord chief Justice, & a license of alienation upon the
 same.

1 s. d.

For drawing the concord.

0. 3. 4.

For my Lord chief Justices fee for acknowledg-
 ment

0-9-8

To his clerk for instrossing the concord

0. 1. 6.

For

For the Writ of Covenant.	0-2
For the return	0-1
For the <i>Post diem</i> thereof	0-0
For the Fine	0-0
To the Receiver for making the Writ of Covenant	0-0
For the Entry and Indorsment	0-0
For the Doctors hand	0-0
For the Warrant of Attorney and filing it.	0-2
To the <i>Custos Brevium</i>	0-3
To the Clerk of the Rings Silver	0-1
To the Chyrographer	0-6
For ingrossing the Fine	0-3
For the Attorneys Fee	0-6

*Charges of the Fine acknowledged
at Barre.*

F OR drawing the the <i>Precipe</i> and Concord	3
For the Writ of Covenant	1
For return of the same	1
For the filing thereof	0-1
To the Sargeant at Armes	3
To the Prothonotary	
To the Secondary	
To the Cryer, Tipstaves, and Court keeper	1
For the Fine	
To the Receiver	1
For Entry and Indorsment	
For the Doctors hand	
For the Warrant of Attorney and filing it	
To the <i>Custos brevium</i>	3
To the Clerk of the Kings Silver	1

The Compleat Attorney.

811

To the Chirographer.	4-8
For ingrossing the Indentures of the Fine.	3-0
For the Fee.	6-8

Charges of a Fine acknowledged by Dedimus potestatem, before a Judge, and exemplified.

For drawing the <i>Pricipe</i> and Concord.	3-4
To the Judge for his Fee.	9-8
To the Clerk for the return of the <i>Dedimus</i> , and ingrossing the Concord.	2-6
For the <i>Writ</i> of <i>Dedimus potestatem</i>	9-2
For all other fees, as in the next proceeding, for the several Offices.	
For the exemplification.	2-8
For the exemplifying.	5-6
For the Seal thereof.	2-2

Charges of a Fine by speciall Dedimus potestatem, taken before Commissioners.

For drawing the <i>Precipe</i> and Concord	0-3-4
For the special <i>Dedimus potestatem</i>	1-0-0
For the Return	0-3-0
For the rest of the fees they differ very little from what are paid upon Fines otherwise acknowledged.	

HAVING spoken so largely of Fines, it now rests
 We should speake some what of Recoveries, that relate

relate thereunto, for in many cases where a fine had, if there be Remainders over, it is very necessary for the Purchasers security to have a Recovery, to barre those in Remainder.

We shall therefore begin to shew you how to sue forth a Recovery, the Tenant and Voucher coming in person into court.

When you would sue forth a Recovery to be suffered by the parties in open court, you must doe thus.

Draw your Precipe for your Writ of entry, naming the Demandants and the Tenants, the quantity of Lands, and of what nature, how many acres, what Mannors, Messuages, and in what place or places they lye or extend.

Then take your Precipe, and enter it upon the Bill or Pleas or Remembrances of the Prothonotary, in whose Office you enter and put the Voucher or Vouchers names in the margin of the Remembrance, if it be a single Voucher, then thus: The proper Tenant calls Howse to warranty,

If a double Voucher, the proper Tenant calls J. L. Esq. who calls J. Howse (who is the common Voucher and the last Voucher in the Recoveries) if a treble Voucher, then you must name another person to be Vouched over.

Upon this Remembrance you must enter after your Precipe, the Return and Teste of your Writ of entry, and how it is returned, and the Sheriffs name, but this you make perfect before you examine your Recovery with the Prothonotary.

Those remembrances are alwayes brought to the Hall in the Term time at the first sitting of the court, so that when you would draw your recovery at Bar, your fittest time will be in a morning when the Judges first sit down, before they enter upon business.

Having

Having your Clients in readinesse at the Bar, the Tenants and Vouchers and the Remembrance in your hand call them up between the Serjeants, and then deliver the Remembrance, and shew him your *Precipe* in one of the Serjeants hands, who will ask which is the Tenant, and cause him to stand up, as also the Vouchers, to the intent that they may be shewed to the Court, then the Judges will ask, who knows the parties, which you or some other must answer, you know them to be such parties, or else might others come either in mens or womens names and suffer a Recovery of their Lands, to the losse of their Lands, as hath been heretofore seen; where the husband brought in another woman a stranger; saying, shee was his wife, and suffered a Recovery of his wifes lands to cut off her estate without her consent.

After the Tenant or Tenants with the Vouchers, have their appearance recorded, then must you give to every Serjeant that speaks, (and one there is for each person personated, whether Demandant, Tenant or Voucher or Vouchers) two shillings and six pence, which done, and the rest of the fees paid in Court, which follow after amongst others.

Then get the Curſitor to make your writ of Entry by the *Precipe*, and having your Writ of Entry unsealed, you must proceed therewith in the alienation Office, and other Offices in all things, as was shewed in the Writ of Covenant, for the fees and the Fine are all one, onely you must have the Attorney Generalls hand to the Back of your Writ of Entry which you have not to the writ of Covenant, for which you pay ten shillings, formerly but eight shillings, and as for that you should enter into that, the land is not holden in *Capite*, but when they did enter bond, they did pay but sixpence; and also where
1 the

the Land is holden, and you sue forth license of alienation, you should pay nothing.

Then take your Writ, and get it sealed, and then open it, and return it, as you do your Writ of Covenant.

Then deliver your Writ to one of the Clerks of the Prothonotaries Office, who entrench for you, and he will enter and exemplifie your Recovery for you, and make your writ of Seizin, and return that, and examine the Recovery with the Remembrance, Writs of Entry and Seizin, and the Roll your Recovery is entred on with the Prothonotary, who must sign your Exemplification, which being carefully examined and signed, you must get sealed, and then deliver it to your Clyent: And you must be very carefull to see both your Writ of Entry and Seizin filed with the Custos brevium, for that is the Warranty for your proceedings had.

Note your Writ of Seizin may be made returnable Indilate, or at a day certain, or of the Term following, all which your own further experience and practice will shew.

How to sue forth a Recovery by Dedimus potestatem, and warrants of Attorney.

IF either the Tenant or Vouchers cannot come into the Court in prison, you must passe it by warrant of Attorney, which warrant of Attorney may be taken by any of the Judges of either Bench, Barons of the Exchequer, or Serjeants at Law in their circuits without Dedimus potestatem, or by Commissioners in the Countrey,

Country, where you must proceed as in the fine by *Dedimus potestatem*.

When you acknowledge your VVarrant before a Judge, you must draw up your VVarrant as before in parchment, and goe with the parties before a Judge and acknowledge them, and he will under write the Day of the Caption, and subscribe his name, then get your Writ of entry made and passed through the alienation Office, which done, seal it, and deliver it to your Prothonotaries Clerk, and he will enter it, and will award the writ of Summons, which will come in nine Returnes after the Teste of the Writ of Entry inclusive, and he will make a Copy of the Declaration he entreth in Parchment, which together with the Writ of Summons, and the Warrant of Attorney, he will examine with the prothonotary by the Writ of Entry and the Rol.

Then will he return a Writ of entry, and give in you fixt together with the Writ of Summons, warrant of Attorney, and Copy of the Declaration

The writ of Entry you must file, the Writ of Summons you must Seal and keep them so fixt together safely til the Writ of Summons be returnable; at which time you must bring the same into Court, and deliver it to one of the Sergeants, who will call it at the Bar, as the manner is, and you must pay the Fees in Court, which done, you must take it from the Sergeant and give it to the Prothonotary, who will mark it thus (*A Barram*) and give it you again, which you must deliver to your Clerk in the Prothonotaries Office, who will exemplifie and make your Recovery perfect and fitted for the Scale.

NOte that although the Tenant be by warrant of Attorney, if either the Recovery be a single Voucher,

Voucher, or the Vouchers come in person, it needeth no summons and so may be a perfect Recovery of one Term.

Note also, where you will take your warrant by *Dedimus potestatem* before special Commissioners, you must carry a note of your *precipe*, and of your Commissioners names to the Cursitor, and get him to make your *Dedimus*, and proceed in that as is shewed you in case of a Fine, as to the Caption: and when your warrants are acknowledged, get them Certified, and then by the help of your Prothonotaries Clerk you may soon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or so as your cause shall require.

It becometh the Attorney to be very carefull of the true returning and filing of his Writs, and the examining and filing of his warrants, and other proceedings, for fear of committing error: and to that purpose by the Statute of 23. Eliz. it hath been used, especially in weighty matters, to exemplifie the Writs, Returns, and Warrants of Attorney, for fear of being imbezled, whereby the Recoveries might be overthrown.

If you are to search for any Recovery of an old Terme, you must search in the Office of the Clerke of the Warrants of Attorney, where you shall soonest find it of any place, by reason all the Prothonotaries bring in the Pla Rolls, on which the Recoveries are entered to the Clerk of the Warrants to take them out into a book.

It hath been the constant practice formerly, in case the Land were holden in *Capite*, to sue forth a license of Alienation as you doe in the case of a Fine, and that before a Writ of Entry, for else you may be inforced to sue forth a pardon afterward, which was a very great mischief.

Charge

Charges of a Recovery with two Vouchers in person at the Bar:

	s.d.
For drawing your <i>Precipe</i> ,	2-6
For taking it into the Remembrance,	1 0
For your Writ of Entry,	2 6
For the Fine of it,	
To the Receiver,	0 6
For the Doctors hand, entering and indorsing,	1 6
For drawing it at Bar, and four Sargeants,	13 4
To the Criers,	1 0
To the Box,	1 0
To the warden of the Fleet,	0 6
For the common Vouchee,	0 4
For the Attorney Generalls hand to the Writ,	10. 6
For making the Remembrance when the Recovery drawn at the Bar,	2 0
For the Return of the Writ of Entry,	2 0
For the <i>Post diem</i> of the writ of Entry	0 4
For the Returne of the writ of Seisin,	2 0
To the Prothonotary for the Entry of the Recovery	14-6
To the Clerk for exemplifying of it, and making the writ of Seisin,	7-6
For sealing the Exemplification, and writ of Seisin,	2-9
For filing the writs of Entry and Seisin,	2-0
For the Fee of Demandant, Tenant, and Vouchee in the Recovery,	13 0
Charge	13
	Charge,

Charges of a Recovery by Summons upon a Warrant of Attorney.

For drawing your Recovery Precipe. }
and the Warrant of Attorney. }

s. d.
3 4

For entry of the Summons,

6 6

For making the Writ of Summons, and the Seal,

2 7

To the Clerk for drawing the Summons, and the entry in Parchment.

2 6

For filing every Warrant of Attorney,

6 8

For return of the Writ of Summons,

9 0

For the filing of it.

1 0

Note that every single Voucher hath three Sergeants, a double Voucher foure Sergeants, and a trebble Voucher hath five Sergeants, and so further.

The Prothonotary hath as you see before for his entry for every Summons,

6 6

For every single Voucher,

10 6

For every double Voucher,

14 6

For a trebble Vouehet.

18 6

For every Dedimus and Mitimus.

4 0

The Charge of a Recovery under the Great Seale of England.

For the Certiorare,
For the allowance therof,

1 s. d.
0. 13.
1. 09.
10

To the Clerk for his paines	0-06-8
For the Exemplification for every Skin,	1-06-8
For the Seal,	1-00-6

*Come we now to the Action called
Ejectione Firme.*

THis action is the most generall action now in use, for tryall of a Title, and comes in place of many real actions, which were both very tedious, difficult, and chargeable. This lies where a man makes a Lease to another of Lands, Houses, &c. And seals and delivers it upon the Premises, and leaves the Lessee in possession, and afterwards the Lessee is outed by the entry of a stranger; here in this case the Lessee shall bring his Ejectione Firme.

And in bringing this Action, he must have recourse to his Lease, both for the thing demised, and the Term, and the date of the Demise, and the place precisely where the Land lies, but those only are to be mentioned in the Court; but not in the Writ.

You must be sure your Originall bear Teste, after the entry of the Ejector, and after.

In this action is recovered the possession of the Land or House demised, and that by an execution of Habere facias Possessionem, which is awarded upon the Judgement Roll, and also damages.

The Proccesse in it are Originall Capias alias, &c.

The Originall runs thus.

THe Keepers of the Liberry, &c. Greeting, &c.
Wherefore by force and Armstwo Mellsuages,
1 4 one

one Garden, eight acres of Land, two acres of Meadow, and three acres of pasture, with the appurtenances in H. which R.C. to the aforesaid T.P. did demise for a Term which is not yet past, did enter, and him the said T.P. for his Farm aforesaid he did eject, and other harmes to him he did, to the great damage of him the said T.P. and against the publicke peace, &c.

This is the form of your Originall, and must be made thus by the Cursitor of the Shire, where the Land lyeth.

Note that although in your Lease you many times name severall closes, either of land, Meadow, or Pasture by their particuler names, yet in your Writ you must name the quantity of acres of each, and how many houses, cottages, Mills, &c.

After your Originall is sued out, and a *Nihil* returned thereupon, you proceed to take out a *Capias*, and so arrest the Ejector, but if you cannot arrest upon the *Capias*, you may as in other Actions proceed to the Ourlawry.

But the party against whom you bring your action either appearing after arrest, or voluntarily, you must prepare your Declaration.

The Declaration goeth thus.

Bedford ff.

R.G. lately of H. in the county aforesaid, Yeoman, was attached to answer T.P. of Plea, wherefore by force and armes, two Messuages, one Garden, eight acres of Land, two acres of Meadow, and three acres of Pasture, with the appurtenances in H. which R.C. to the aforesaid T. P did demise for a Term, which is not yet past, did enter, and him the said T.P. from his farm aforesaid he did eject, and other harms to him he did, to the great damage of him the said T.P. and against the publique peace
&c.

&c. And whereupon the said T. P. by F. N. his Attorney complains, that whereas the aforesaid R. C. (such a day, and year and place, naming the date of the Demise) did demise to him the said T. P. the Tenements aforesaid with the appurtenances, to have and to occupy to him and his Assignes, (from such a day then last past) unto the end and tearme of three years then next following, and fully to be compleat and ended, by vertue of which Demise, the aforesaid T. P. into the Tenements aforesaid with the appurtenances did enter, and was thereof possessed, and the said T. P. so being thereof possessed, the aforesaid R. C. afterwards, to wit, (such a day and yeare aforesaid) by force and armes, &c. Into the Tenements aforesaid with the appurtenances, which the aforesaid R. C. to him the said T. P. in form aforesaid did demise, for the term, aforesaid, which is not yet past, did enter, and him for his farme aforesaid did eject, and other harmes, &c. to the great damage, &c. and against the publick peace, &c. whereupon he saith, that he is dammified and hath damage to the value of forty pounds, and thereupon he brings his Suit, &c.

To this most generall plea is not guilty, nor is there indeed any other plea in use, sometimes the Defendant confesseth the action, and here you see following a plea if not guilty, and a confession both to one action.

And the aforesaid R. by T. L. his Attorney comes and defends the force and injury when, &c. And as to the whole trespassse and Ejectment aforesaid, above supposed to be done, besides the trespassse and Ejectment in three acres or Land of the Tenements aforesaid with the appurtenances, hee the said R. sayes that he is no wise thereof guilty as the aforesaid T. P. above against him declareth, and of this he puts him-
selfe

selfe upon the Country, and the aforesaid T. P. in like
 manner, and as to the trespass and ejectment aforesaid
 in the aforesaid 3 acres of land of the Tenement aforesaid
 with the appurtenances, above supposed to be
 made, he the said Attorney of the aforesaid R. says that
 he is not informed by the aforesaid R. G. his Client
 of any answer for him the said R. G. to the aforesaid
 T. P. in the complaint aforesaid to be given, and no
 thing other he thereupon saies, by which the said T. P.
 should remain against him the said G. for which he
 the said T. P. his aforesaid term of, and in the aforesaid
 three acres of land with the appurtenances,
 and his damages by reason of the Trespass and Ejectment
 aforesaid; in the same three acres of land ought
 not to recover, but because it is convenient and neces-
 sary, that there be only one tax of the damages for
 the whole Trespass and Ejectment aforesaid, if it
 shall happen that upon the determining of the issue
 aforesaid, Judgment shall be rendered for the aforesaid
 T. P. Therefore the Writ for giving of possession in
 that behalfe is to cease, and also of inquiring of da-
 mages, by reason of the trespass and Ejectment aforesaid,
 in the same three acres of Land with the appur-
 tenances, untill the issue above joyned be determi-
 ned, and as to the trying of that issue, command is gi-
 ven to the Sheriff, that the cause to come here twelve,
 &c. By whom, &c. and who neither, &c. to recognize,
 &c. because as well, &c.

Here you have an issue joyned, which if you intend
 to try, you must proceed as is directed you in other
 Actions, and so consequently for your Judgment after
 verdict.

In this Action as I told you, there is possession re-
 covered as well as damages, and for Execution in
 both, which is for possession, your *Habere facias pos-*
sessionem, which is made, you must usually by the clerk
 of

the Judgements after your costs are taxed, and the Judgement signed, and likewise a *Capias ad satisfaciendum* against the body for the damages, or a *Fieri facias* against the goods or lands, which are also made by the Clerk of the Judgements, and may likewise be made by any of the Prothonotaries Clerks.

Having your Writ of *Habere facias possessionem*, in case you cannot voluntarily have quiet and peaceable possession, you must deliver your Writ to the Under Sheriff, who will put you into possession, and remove whomsoever are in.

The Fees incident to this Action follow in a Table amongst others.

Replevin and Avowry comes in the next place to be handled as that which brings a title manytimes in question by reason of the Avowry. Wherein we shall shew you the nature of the Action, and in what cases it lies, and for what things, what is incident to it by way of proceeding.

And to give you the fuller knowledge of this Action, we will begin to treat briefly of Distresses in general.

Distresse is a thing which is distrained in a House or upon any Land for rent behind, or other duty or services, or for hurt done, although the property of the thing belongeth unto a stranger: But if they be catrell that belong to a stranger, it is requisite that they were levant and couchant upon the same ground: that is to say, that the beasts have been upon the ground a certain space, and have well rested themselves there, or else they are not distrainable for Rent or service.

And if a man distrain for Rent services, or other thing, without a lawfull cause; then the party grieved shall have a Replevin, and upon security found,

to pursue his Action, shall have the Distresse delivered to him againe: But there be divers things that be not distrainable, *Viz.* another mans Garment in the house of a Taylor, a strangers cloath in the house of a Fuller: Shearman, or Weaver, for that they be common Artificers, and that the common presumption is, that such things belong not to the Artificers in their own right, but to other persons which put them there to be wrought: The Lessor cannot distraine fats fixt by his Lessee for a dying Pan, although the Lessee may remove them during his Term.

The Lessor cannot distrain Glasse fixt by the Lessee for his rent.

The Lord cannot distrain shocks of Corn for his Rent, but doing damage he may; sheaves of Corn in a Cart may be distrained; Victuals is not distrainable

A Distresse ought always to be made of such things whereof the Sheriff may make Replevin, and deliver againe in as good case as they were at the time of the taking.

A man may distrain for homage of his Tenant, for fealty and escuage and other services.

He may distrain also for fines and Amerciaments, which he assessed in a Court-Leet, but not in a court Baron.

He may likewise distrain for Damage-feasant, that is to say, when he findeth the Beasts or Goods of any other, doing him wrong by eating his grasse or corn, or trampling them down, or for incumbring his ground.

Note a man may not distrain for any Rent or thing due to any Lord, but upon the same Land that is charged therewith.

But in case when a man comes to distrain, the other seeing

Seeing his purpose, chaseth his beasts or carrell away, or beareth his goods out, to the intent they shall not be taken for a distress upon the ground, in such case I may well pursue, and if I take it presently in the high way or in another mans ground, the taking is lawfull as will there as upon the Land charged, to whomsoever the property of the goods be.

And for fines and amerciaments, which be assessed in a Leet, one may always take the goods of him that is so amerced, within whose ground soever they be within the Jurisdiction of the Court.

Where one is amerced in a Leet, and another takes Leather from him, & makes thereof boots & shooes, whereby there seems to be an altering of the property: in this case, those boots or shooes being within the Precinct of the Leet may be distrained for the amercement.

Note, when one hath taken a Distresse, it behooveth to bring it to the common pound, or else he may keep it in open space, provided that he give notice to the party, who was owner of it, or his taking of it, and the place where it is, that he, if the Distresse be a quick beast, may give it food, and then if the beast or beasts dye for default of food, he that was distrained will receive the losse, for the party distraining may take another distresse for the same rent or duty.

But if he carry the Distresse to a Hold, or out of the county, so that the Sheriff may not make deliverance upon the Replevin, then the party upon the Sheriffs return of the Replevin may have a Writ of *Vvithernam* directed to the Sheriff, that he take as many of his beasts, or as much goods of the other in his keeping till he hath made deliverance of the first distresse, and also if the beasts or good be conveyed to a Fort or Castle, the Sheriff may take with

with him the *Posse committatus*, that is the power of the County, and beat down the Castle, as appears by the Statute of *Westminster* the first, Chapter the seventeenth.

There is Distresse finite and infinite.

Distresse finite, is limited by Law, how often it shall be made to bring the party to a tryal of the action, as once nor twice.

Distress infinite is within limitation untill the party come, as against a Jury that refuseth to appear upon Certificate of Assize, the processe are a *Venire facias*, *Habeas Corpora*, and Distresse infinite.

It is divided also into Grand Distress, and an ordinary Distress.

A Grand Distress is that which is made of all the Goods and Chattells, which the party hath within the County, and seemeth sometimes to be all one with the Distress infinite.

If a man proffer sufficient amends before the Distress made, for the wrong done by a mans Cattell, or otherwise, he cannot Distrain and Avow.

Now that it is not lawful for any common person to make Distresses out of their Fee, nor in the Kings high way, nor in the common street, but the King might, and so might any that were substituted as his Ministers, and have especiall authority derived from him.

Thus much for Distresses in general, we come now to the Replevying of the Distress taken.

THis Replevin (as we touched before in Distress) is a writ that lieth where any man distraineth another for Rent or other things, then the party distrained

trained shall have this Writ to the Sheriff to deliver to him the Distresse, and shall find Surety (as we said before) to pursue this Action, and if he perforce do not, or if it be found or adjudged against him, then he that took the Distresse shall have againe the Distresse, and that is called the return of the beasts, or of other things, and he shall have in such cases a Writ that is called a Returno Habendo.

Also if it be in any Franchise or Baliwick, the party shall have a Replevin of the Sheriff, directed to the Bailiff of the same Franchise, for to deliver them againe, and he shall find surety to pursue his Action at the next County Court, and this Replevin may be removed out of the Country unto the Common pleas, by a Writ of Recordare.

Note, that a man may have a Writ of Homine replegeando, which lies where a man is in prison, & not by the especial commandment of the King, nor of his Justices, nor for the death of a man, nor for the Kings Forrest, nor for such cause that is not repleviable, then he shall have this Writ directed to the Sheriff, that he cause him to be replevied.

This Writ is a Justices, and not returnable, and if the Sheriff do it not, then there shall go forth another Writ *Sicut alias*, and afterwards a nother Writ *Sicut plures vel causam nobis significes*, which shall be returnable, and if the Sheriff yet make no Replevin, then there shall go forth an attachment against the Sheriff, directed to the Coroners to attach the Sheriff, and to bring him before the Justices at a certain day, and furthermore that they make execution of the first Writ.

If a man take living Cattell, and more then one beast, then the Writ of Replevin runs thus.

The Writ of Replevin.

THe Keepers, &c. We command thee that justly and without delay, thou causest to be Replevied, unto B. his Cattell, which C. took, and unjustly detaines, as its said, and afterwards to him then thereupon, justly cause to be brought back, lest that we any more hereupon, hear a complaint for want of Justice, &c

If it be put one single Beast that is taken, then the Writ shall be.

The Keepers, &c. We command thee, &c. that thou causest to be replevied unto B. his Horse, Heyfer, or Bull, &c.

If it be of any dead Chattell, the Writ shall go thus.

The Keepers, &c. We command thee, &c. that thou causest to be replevied unto B. his Goods and Chattells,

In this Declaration it behoveth him to declare of divers things, naming them.

But if he take but one thing that is a dead Chattell, then the Writ shall be thus.

The Keepers, &c. We command thee, &c. that thou causest to be replevied unto B. a certain Net or a certain iron of his Mill, &c.

NOte that if the Sheriff return upon the Replevin, the Alias or Plures (where the replevy is to be made within the Liberty or Franchise) that he hath commanded the Bayliff of the franchise, who hath given him no answer, or that the Bayliff will not make deliverance, that then the Plaintiff shall have a *Non omittas* directed to the Sheriff, commanding him to enter into the Franchise, and make the Return, and if the Sheriff do it not, the Plaintiff shall

shall have an *Alias non omittas*, directed unto the Sheriff, and afterwards a *Plures non omittas*, &c.

But this Return, That he hath commanded the Bailiff of the Liberty, &c. who gave me no answer, &c. or the other return, That the Bailiff will make no deliverance; are no good returns; for by the Statute of West. I. chap. 27. in the end of the same Statute appears, That the Sheriff upon such a Return made to him by the Bailiff, ought presently to enter into the Franchise or Liberty, and make deliverance of the thing taken.

And if the Sheriff upon the *Plures* return, that the aforesaid B. the cattel of the aforesaid A. hath taken, and them hath driven out of the Connty, into the County of F. by which he cannot replevy them unto him; or if the Sheriff return that he hath commanded the Bailiff of the Franchise of D. who hath returned of Writs, &c. who hath answered him, that the Cattel are esloined into divers Liberties, that he cannot have the view of them, whereby to make deliverance.

And if the Sheriff himself make return, that he cannot have view of the cattel whereby to make deliverance; or if the Sheriff return, that after the taking of them, &c. the Defendant hath esloined his beasts out of his Bailiwick, by which he cannot make deliverance; or if the Sheriff return that the Defendant hath esloined his beasts into places unknown, by which he cannot come to have a view of the beasts, whereby to make deliverance; or if the Sheriff return, that he hath commanded the Bailiff of the Franchise, &c. who hath answered him, that the Defendant hath impounded the Beasts within the Rectory of the Church of C. by which he cannot make deliverance: Upon these returns made by the Sheriff, the plaintiff may have a writ of *Vilbervnam* to take as many of the

beasts of the Defendant, and it shall be directed to the Sheriff, and the writ shall be thus.

The writ of VVithernam.

THE Keepers, &c. VVhereas we have many times commanded thee justly, &c. to A. his cattel which B. took, &c. and detaineth, as it's said, thou shouldest replevy, or signifie the cause to us, wherefore our commandment to thee many times thereupon directed, thou couldest not, nor wouldest not execute: And thou hast signified unto us, that after the aforesaid B. took the Cattel of the aforesaid A. he drove them in your county, and from that county into the county of C. by which you could not replevy them to him the said A. VVe willing to stop the malice of him the said B. in that behalf, command thee, that the Cattel of the aforesaid B. within my Bailiwick thou take without delay in *VVithernam*, and then thou detain until, according to the custom of our Realm of England, thou canst replevy the aforesaid A. his cattel, according to the tenor of our aforesaid command to thee formerly directed, &c.

Note, in this writ of *VVithernam*, that whatsoever the Sheriff return upon the Plures, it ought to be inserted and rehearsed in the writ of *Withernam*, as is before specified; and if the Sheriff return upon the Plures, that he hath commanded the Bailiffe of the Franchise, &c. who answereth him, That the Cattel are essoynd, &c. then the Plaintiffe shall have a *VVrit* of *Withernam* directed to the Sheriffe, and the Sheriff shall command the Bailiff of the Franchise to serve the *Withernam*; and if the Bailiff do not Execution, or give not an answer to the Sheriff of the Precept directed to him, then the Plaintiff shall have a *Withernam* directed to the Sheriff, with a (Non omittas propterea aliquam libertatem, &c. qui cum ingredi

aris, &c.) and shall take in Withernam, &c.

Note, That the Sheriffe upon complaint made unto him of the taking of Cattel, may command his Bailiff by word of mouth to make Replevin, and this as well as if the Sheriff had made a Precept to his Bailiff to make a Replevin; for it may so fall out, the Sheriff nor his Bailiff may not be able to write, or may want Pen, Ink, or Paper.

If a man take Cattel, damage feasant, that is, doing hurt, and offer sufficient amends before the Cattel be unpounded, and the party refuseth it, &c. Now if he sue a Replevin for the Cattel, he shall recover damages only for the detaining of them, but not for the taking of them, for that was warrantable.

And if the Lord take the Beasts of his Tenant wrongfully, and after the Beasts return unto the Tenant, yet the Tenant shall have a Replevin against the Lord for those Beasts, and shall recover his damages for the wrongful taking of them.

And if a man distrain in one County, and drive the Cattel into another County, the party whose cattel they were, may sue a Replevin in either of the counties, which he please, or in both.

And if the Cattel of a feme sole, that is, a woman unmarried be taken, and afterwards she take a Husband, the Husband solely may sue a Replevin.

Note, In Replevin, if the Plaintiff declare that the Defendant now hath and detaineth the Cattel, &c. and the Defendant appeares, and after makes default, the Plaintiff shall have judgement to recover all in damages, as well the value of the Cattel, as damage for the taking of them, and his costs.

IN this Action of Replevin the Process are Summons, Attachment and Distress, and upon a Ni-

chil, Proceſſe of Outlawry, and; then the Original muſt come forth of the Chancery, except the Sheriff who make a Replevin, *Ex Officio*, (which ſhall be tryed in the Sheriffs court, called the County-Court) do make it, which is moſt uſual, and then it may be removed forth of the Sheriffs Court by a *Recordare*; or forth of any Lords Court, or Hundred Court, by an *Accedat ac curiam*; upon either of which writs returnable, either into the upper Bench, or common Bench, if the Plaintiff declare not againſt the Avowant for taking his goods or chattels which were taken before; the Avowant is to ſue out a writ of *Returno Habendo*, to be made by the Philizer of the county; upon the return of which writ, if the Plaintiff, that is, he whoſe cattel were taken, declare not, there ſhall be a Writ to enquire of damages, &c.

And if the Sheriff upon the *Returno Habendo*, do return that the cattel were eſſoined, &c. then a *Capius* in *Witbernem* as was before ſaid, ſhall be awarded to take other cattel; and if the Sheriff return that he hath no cattel, then a *Capias* againſt the body; and thoſe Proceſſes are likewiſe made by the Philizer of the County, &c. and the like Proceſſe may be had in a Court Baron, in Replevin there.

Having ſhewed you the nature of this Action, and how and in what caſes it lies, and the Proceſſes that are incident to it, we come now to the Declaration upon it.

Devon, ſſ.

IN. was ſummoned to answer *W.D.* of a Plea, wherefore he tooke the cattel of him the ſaid *W.* and them unjuſtly detained againſt Sureties and Pledges, &c. and whereupon the ſame *W.* by *I.D.* his Attorney, complains that the aforeſaid *I.N.* ſuch

Such a day and yeer, at R. in a certain place there, called E. he took the cattel, that is to say, five Heifers and two Bullocks of him the said VV. and them unjustly detained against Sureties and Pledges, until, &c. whereupon he saith that he is damnified, and hath damage to the value of twenty pounds, and thereupon he brings his Suit, &c.

The Avowry, or Damage-feasant.

ANd the aforesaid J. by R. F. his Attorney, comes and defends the force and injury, when, &c. and as the Bailiff of I. E. well acknowledgeth the taking of the said Cattel in the aforesaid place, in which &c. and unjustly, &c. because he saith, that the same place in which the taking of the Cattel aforesaid was supposed to be done, containeth, and the aforesaid time of the taking aforesaid above supposed to be done, did contain in it sixteen Acres of Land, with the Appurtenances in R. aforesaid; which said sixteen Acres of Land with the Appurtenances are, and the aforesaid time of taking aforesaid, above supposed to be done, were the sole and free Tenement of the said I. E. and because the Cattel aforesaid; the aforesaid time wherein, &c. were in the aforesaid place, in which, &c. feeding upon the grasse growing therein, and doing damage there, the same I. as the Bailiff of the aforesaid I. E. well acknowledgeth the taking of the aforesaid Cattel in the aforesaid place, in which, &c. and justly, &c. doing there damage, &c.

A Plea in Bar to the Avowry, by a Guardian in Socage.

AND the aforesaid VV. saith, that the aforesaid I. for the reason before allcadedged, ought not to acknowledge the taking of the aforesaid catel, in the aforesaid place, in which, &c. as the Bailiff of the aforesaid J.E. to be just, because he saith, that before the aforesaid time of the taking aforesaid, and long before the aforesaid J.E. had any thing in the aforesaid sixteen acres of land with the appurtenances, one R.E. was seised of the Mannor of H. with the appurtenances, in the county aforesaid, whereof the aforesaid place in which, &c. is, and the aforesaid time of taking aforesaid, was parcel in his Demesne as of Fee, and being so thereof seised, the Mannor with the appurtenances whereof, &c. he held of one R. VV. Knight, as of his Mannor of L. in the county aforesaid, in Socage, that is to say, by Fealty, and the Rent of twenty pounds by year every year at the Feast of Saint Michael the Archangel, yearly to be paid; as also by the Service of doing suit to the court of the said R. of his aforesaid Mannor of L. from three weeks to three weeks, at the aforesaid Mannor yearly to be held; and the same R.E. of the Mannor of H. aforesaid, with the appurtenances whereof, &c. being so seised, dyed thereof seised, after whose death the said Mannor with the appurtenances whereof, &c. descended to the aforesaid J.E. as to the Daughter and Heir of him the said R.E. the same J.E. being then within the age of fourteen years; that is to say, at the age of twelve years, and the said VV. is the next of kindred to the said J.E. that is to say, the Brother of Elianor, the wife of the aforesaid R. E. and Mother

of the aforesaid J.E. to whom the aforesaid Mannor of H. with the appurtenances whereof, &c. cannot from the aforesaid J.E. by hereditary right descend, by which the custody of the aforesaid Mannor of H. with the appurtenances whereof, &c. and of the aforesaid J.E. until the lawful age of fourteen years of her the said J.E. pertains, by which the said VV. the aforesaid time of taking aforesaid, was of the custody of the said Mannor of H. with the appurtenances whereof, &c. and of the aforesaid J.E. possessed, for that at the same time in which, &c. the said J.E. was within the age of fourteen years; and being so thereof possessed, afterwards, and before the aforesaid time of taking aforesaid, he puts his aforesaid cattel in the aforesaid place, in which, &c. to feed on the grass then thereupon growing: which said cattel were in the aforesaid place, in which, &c. feeding upon the grass then growing, until the aforesaid J. the day and year in the Declaration above specified, at R. aforesaid, took the aforesaid cattel of him the said W. and them unjustly detained, against Sureties and Pledges, until, &c. as the said W. against him complains, and this he is ready to aver; whereupon for that the aforesaid J. above acknowledged the taking of the aforesaid cattel, in the aforesaid place in which, &c. the said W. prays Judgment and his damages, by reason of the taking and unjust detaining of the aforesaid cattel, to be adjudged unto him, &c.

The Defendant maintains his Plea, and traverses the Tenure in Socage.

ANd the aforesaid J.N. as formerly, saith, That the aforesaid sixteen acres of Land with the appurtenances, and at the aforesaid time of taking

aforesaid, above supposed to be done, were the said
and free Tenement of the aforesaid I.E. as he before
hath alledged, without that, that the aforesaid R.E.
held the aforesaid Mannor of H. with the appurte-
nances whereof, &c. of the aforesaid R.VV. Knight
as of his Mannor of L. of *Soccage*; that is to say, by fe-
alty; and the Rent of twenty pence by the yeer, eve-
ry yeer, at the Feast of Saint Michael the Arch-
angel, yearly to be paid, and by the service of doing
suit at the Court of the aforesaid R. VV. of his aforesaid
Mannor of L. from three weeks to three weeks,
at the Mannor aforesaid yearly to be held, as the a-
foresaid VV. hath above alledged, and this he is rea-
dy to aver, whereupon he prayes Judgement, and the
return of his cattel, together with his damages to him
the said J.N. to be adjudged, &c.

Issue upon the traverse.

AND the aforesaid VV. as formerly, saith that the
aforesaid R.E. held the aforesaid Mannor of H.
with the appurtenances whereof, &c. of the aforesaid
R.VV. as of his Mannor of L. in *Soccage*, that is to
say, by fealty, and the Rent of twenty pence by
yeer, each yeer at the Feast of S. Michael the arch-
angel, yearly to be paid, as also by the service of do-
ing suit at the Court of the aforesaid R. VV. of his a-
foresaid Mannor of L. from three weeks to three
weeks, at the said Mannor yearly to be held, as he
hath before alledged, and this he prayes may be in-
quired of by the Countrey; and the aforesaid J.N. in
like manner; therefore command is given to the Sher-
riff, that he cause to come here twelve, &c. by whom,
&c. and who neither, &c. to recognize, &c. because
as well, &c.

Here you have both a Declaration, and Avowry, a
bar

bar to the Avowry, a Rejoinder, and a Sur-rejoinder, whereby you have a full and a compleat Issue made up.

And here note, That this Avowry is for damage-feasant; but there are several other Avowries; as,

First, a man may avow for services due to his Mannor, as Suit to his Court, or Suit at the Mill, &c.

Or for a Rent Charge upon prescription to distress.

Or for a Rent Charge generally he may avow.

A man may avow for an amerciament in Court Baron.

After Issue joined, in case you would proceed to a Trial, your proceeds are for the making your *Venire*, and suing out your Record, and *Habeas Corpus*, as in other actions.

Partition.

His action lies in several cases, as where Lands descend by the course of the Common-Law, or by custom, as *Gavelkind* Land amongst Coheirs or Copartners, where there must be two at the least, whether they be Sons, Daughters, Sisters, Aunts, or otherwise of kin to the ancestor from whom the Land descended unto them.

And this partition is made four wayes for the most part, whereof three are at pleasure, and by agreement among themselves: the other is by compulsion, when any refuse.

One partition is, where they themselves divide the Land equally by agreement, into so many parts as there be of them Copartners, and each chooseth one

one share or part; the eldest first, and so the one after the other, as they be of age, except the eldest by consent made the partition, then the choice belongeth to the next, and so the eldest last, according to the old Rule, He that divides must not choose.

Another partition is, When they choose certain of their friends to make division for them.

The third partition by agreement, is by drawing of Lots thus, 1. To divide the land into so many parts as there be Copartners; then to write every part severally in a little Scrowle or piece of paper, or parchment, and put the same scrowles up close into a Hat or Cap, or other such like thing, and then each Partner, one after the other as they be of age, to draw out thereof one piece, or scrowle, whereon is written a part of the land, which by this drawing is now severally allotted unto them in Fee simple.

The fourth partition, which as we said, is by compulsion, comes now to be treated of; which is, where one or some of the Copartners would have partition, and other some will not agree thereto, then they that so would have partition, may bring a Writ *De partitione facienda*, against the other that would not make partition; by vertue whereof they shall be compelled to part, &c.

In Rent where the Lands are in the nature of *Gewelkind*, they call at this day their partition *shifting*, which is the same with that the Saxons used, namely, *Shafston*, which signifies, to make between Co-heirs partition, & to assign to each of them their portions; in *Latin* it is called *Hortiscere*.

Partition may also be made by Joynt-Tenants, or Tenants in common by their assent by deed between them, or by Writ, by the Statute of 32 H. 8. chap. 31. & by the Statute of 33 H. 8.

The Process in this Action, is Summons, Attachment, and Distresse infinite.

Your summons is as follow.

The Summons in Partition.

THe Keepers, &c, If *A. &c.* then summon *B.* to shew wherefore when they the said *A.* and *B.* together and undivided, hold three acres of the land with the appurtenances of the Inheritance which was *M* Mother of the aforesaid *A.* and *B.* whose heirs they are in *J.* the same *B.* to make partition thereof between them, according to the Law and Custom of the Common-wealth of England, deemeth, and the same permitteth not to be done, most unjustly as she saith, and have you there this Writ, &c.

NOte, that the Summons varies in the case where there are three or four Copartners, and likewise where it is between Joynt-Tenants, or Tenants in Common; the Summons according to the several cases, were too large here to insert.

Having your Summons thus made returnable of any Term, the Defendant may Essoyn if he will.

If the Defendant do Essoyn, it rests on the plaintiffs part to adjourn it, as if the Summons *Tres Michaelis*, he may adjourn to *Crastino Martini*, and then issues out from the Philizer a Writ, called a *Pone*, returnable, *Ostabis Hillaris*, and then upon that returned by the Sheriff, you must file your *Pone* with the Philizer, which warrants the making out of a *Distringas* returnable, *Ostabis Purificationis*, and upon that get an Amerciament of five pounds; if the Defendant appear not, then you may have an *Alias Distringas* returnable in *Easter Term*, doubling your

Issues

Issues, and so Distress infinite till he do appear.

Where the Defendant as before doth cast an Essoin, and there is no adjournment made thereon the Defendant may enter a Non-suit against the Plaintiff if he be careful first to enter a *Ne recipiamus* with the Clerk of the Essoins, upon the day of the Exceptions; upon which Non-suit the Plaintiff may begin again.

Where there are several Defendants, they may severally essoin, if they would protract time before appearance; and where they essoin not upon the Summons, they may upon the *Pone*.

If they do not essoin, but appear, you may declare and your Declaration.

Buck. ff.

A *Anthony Cook*, Knight, in mercy for many defaults; and the same *Anthony* and *Thomas Woodton*, Esquire, were summoned to answer *Peter Temple* Gentleman, of a plea, that whereas they, the said *Peter*, & the aforesaid *Anthony* & *Thomas*, together and undivided, do hold to them and their Heirs the Mannor of *Doffet*, alias *Dorset*, with the appurtenances; they the said *Anthony* and *Thomas* to make a partition thereof between them, according to the force of the Statute in that case published & provided, & deny, and the same most unjustly permit not to be done, against the form of the Statute aforesaid, & and whereupon the same *Peter* by T.L. his Attorney says, That whereas T. and the aforesaid A. and together and undivided, do hold to them and their Heirs the Mannor aforesaid, with the appurtenances whereof, unto him the said *Peter* and his Heirs it belongs, to have one part of the Mannor aforesaid with the appurtenances, in three parts equally divided, and to the aforesaid *Anthony* and his Heirs

pertains to have another part of the same Mannor, with the appurtenances in three equal parts, as aforesaid, to be divided, and unto the aforesaid Thomas and his Heirs it pertaineth to have a third part, the residue thereof to hold to them in severalty, that the same Peter of his part of the Mannor aforesaid, with the appurtenances to him belonging, and the aforesaid Anthony of his part of the Mannor aforesaid, with the appurtenances to him thereof belonging; and the aforesaid Thomas of his part of the Mannor aforesaid, with the appurtenances to him thereof belonging, may be able severally to answer: They the said Anthony and Thomas to make partition thereof between them, according to the form of the Statute in that case made and provided, deny, and the same most unjustly permit not to be done, against the form of the Statute aforesaid; whereupon he saith, that he is damnified, and hath damage to the value of a hundred pounds, and therefore he brings his suit, &c.

In these actions the Pleas are various as the title may be.

The Defendant may plead the Free-hold solely in himself at the time of the Plaintiffs issuing forth his original writ, and traverse that they hold it together undivided, &c. whereupon he prays Judgement, whether partition ought to be made between them, &c.

To this Plea the Plaintiff may take the issue upon the traverse, and if so, they may join the issue, and so proceed to trial.

Upon a verdict and judgement had for the Plaintiff, he may have his Writ of partition directed to the Sheriff, commanding him to take twelve men of the County, and of the Venue, in the presence of the Counters to make partition; by virtue of which writ he

he summons a Jury of the said twelve men, and in presence of the parties concerned, he makes partition, and then his return is as follows.

By vertue of this Writ of the Keepers of the Liberty of England, to me directed, and to this partition indented, annexed; J. T. D. Knight, Sheriff of the County aforesaid (such a day, yeer and place) having been with me L. N. R. F. and twelve free and lawful men of the County, and of the Venue within written in presence of H. L. R. M. in the Writ aforesaid named; In my proper person I came to the tenements the said Writ named, and there by their Oath (having respect to the true value of the same tenements with the Appurtenances) The same Tenements into partition into three parts, equally to be parted I have caused, and one part of the same three parts, *Viz.* *liet*, such and such Land so butted and bounded I the Sheriff aforesaid, the aforesaid day and yeer &c. those to be delivered and assigned, have caused to H. L. in the said Writ named, to be had to her, severally, according to the form and effect of the Writ aforesaid, and as to two parts of the residue of the aforesaid tenements in the aforesaid writ specified; I the Sheriff aforesaid, certifye the Justices with in written, that none of the part of the other two came to receive of me, the aforesaid Sheriff, the same two parts; so that the same two parts to the other two assign and deliver I could not, as the writ aforesaid exacteth and requireth; in testimony whereof, as we the seal of me the aforesaid Sheriff, as the seals of the aforesaid twelve Jurors to this partition indented, set, given the day and yeer abovesaid. Upon this return of the Sheriff, the Judgement is entred, that the partition aforesaid, made in form aforesaid, shall be held firm and stable for ever, &c.

A partition thus made by the Sheriff, and by the

Oath

of twelve men, and Judgement thereupon given, shall binde an Infant, though his part be unequal.

Note, A partition between joynt-Tenants, is not good without Deed: albeit it be of Lands; and that they be com-
pable to make partition by the Statute of 32 Henry the
eighth, Chapter the tenth; and Henry the eighth, Chapter
the tenth, because they must pursue that act by writ, De parti-
tione faciend.

And note, That you are to take out this writ, De parti-
tione faciend. Executed by the Sheriff, together with
the Sheriffs return, Verbatim, into the remembrance in
the Prothonotaries Office, and then the Prothonotary signs
Judgement thereupon.

The fees incident to this action you will finde in
the general Table of Fees.

We proceed now to treat of Dower.

Dower in the Common-Law is taken for that
portion, &c. which the widow hath for term of
her life, of the lands or tenements of her husbands; it
is called Dower or Dowery, as a gift, because the
Law it self doth (without any gift of the Husband
himself) give it to her; it's commonly taken for the
third part, which she hath of her Husbands Lands
after his decease.

To the consummation of this Dower three things
are necessary, Marriage, Seisin, and the death of the
Husband.

This provision the Law hath made for a widow,
where the Husband hath not assigned in his life time
part of his Lands to his wife.

Dower by the custom of some places, as (Gavel-
kind)

kind Land, &c. is to have half the Husband's Lands.

This Writ of Dower lies where a man is sole seized of Lands or Tenements in Fee-simple, or Fee-tail, during the Coverture between him and his wife, where by possibility the Issue between them may inherit; if such a man dye, his Wife shall recover the third part of all the Lands, whereof the Husband was sole seized, any time during the Coverture by a Writ of Dower, though he dyed not seized, and although that he made alienation thereof in his life time.

Where the Husband dyed seized, and the Wife brings a Writ of Dower, and recovers, she shall recover Damages for the profit of the Land incurred from the time of the death of her Husband; but if there were any Estate or alienation made of the Lands, &c. during coverture, so that, the Husband dyed not seized, in that case she shall recover no damages for mean profits, although she recover the Land.

It is not necessary that seizin should continue during Coverture; for being once seized, it sufficeth, although he alien Lands, or extinguish Rents, yet the Woman shall be endowed.

But it is absolute necessary, that the marriage continue; for if that be dissolved, the Dower ceaseth.

In case of Elopement, which is, where a woman leaves her Husband, and goes away with an adulterer, and dwelleth with the adulterer without voluntary reconciliation to her Husband, by this she shall lose her Dower.

A Woman shall not be endowed of a Common without number in gross, nor of an annuity, &c. nor of Rents, &c. if the Freehold of the Rents were suspended before the Coverture; but she shall be endowed of Tythes, of the third part of her profits of Courts, Fines, Heriots, &c.

She shall be endowed according to the value of the land at the time of the assignment, & not according to the value, as it was in the time of her husband, whether the value of the land by building, or otherwise be improved, or whether it be improved by the Heir.

If the Wife be past the age of nine years at the time of the death of her Husband (albeit she were but four years old when she was maird) yet she shall be endowed.

If a Woman marry before she be of years to consent, which is twelve in a woman, and fourteen in a man, yet that imperfect or inchoate marriage (from which either of the parties at the age of consent, may dissolve) after the death of the husband, shall give dower to the Wife.

If the Heire, &c. put her out within forty dayes she shall have a Writ de quarentina habenda, which is a writ that the Law gives, where a man dies seized of a Mannor, place, and other Lands, whereof the wife ought to be endowed, there the woman may abide in the Mannor, place, and there live of the store and profits thereof for the space of forty daies, within which time her dower is to be assigned, as by Magna Charta, Chap. 6.

There needeth neither livery of Seizin, nor writing to any assignment of dower, because it is due of Common right, and the assignment must be of some part of the Land, or of a Rent, &c. issuing out of the same

The assignment must be certain and absolute, and by such as have free bold, or against whom a Writ of Dower lies.

Assignment of Dower must be either by the Sheriff by the Kings Writ, or else by the Heir or other Tenant of the Land by consent and agreement between them.

A Joynture was formerly no bar of Dower at the Common Law, but now it is by the Statute of 27. Henry the eighth, if the Joynture be made to the Wife, according to the Purview of that Statute.

Six things are required to a perfect Joynture.

First, it is to take off it for her life in possession, or profit, presently after the decease of her husband.

Secondly, that it be for term of her owne life, or greater Estate.

Thirdly, it must be made to her self, and no other for her.

Fourthly, it must be made in satisfaction of her whole Dower, and not of part, &c.

Fifthly, it must be either expressed, or averred to be in satisfaction, &c.

Sixthly, it may be made either before or after marriage.

If the Joynture be made for marriage, the Wife cannot Wave it and claime her Dower at the Common Law; but if it be made after marriage, she may Wave the same.

A Joynture made to the Wife above or under the age of nine years is good.

The Wife shall not be endowed of Lands while the Husband holdeth joyntly with another at the same time.

his Death, &c. for that the Joynt Tenant which surviveth, claimeth the Land by the Feoffments, and by the Survivorship, which is above the title of Dower; but the Tenants in common have several Freeholds and inheritances, and their moyeties shall descend to their several Heires, and therefore their Wives shall thereof be endowed.

THe Proceſſe incident to this action of Dower are,

First a Summons, between the Teſte and return, whereof there is five returns.

And if the Tenant neither appear, nor caſt an Eſcryn, entering a *Non recipiatur*, a grand Cape lies to ſeize the Lands, &c. for that for ſuch his default, the Tenant ſhall loſe his Land.

But if he wage his Law of *Non ſummons*, he ſhall ſave his default, and then he may plead with the Demandant.

NOte that in the Grand Cape, the Tenant ſhall be Summoned to answer to the Default, and further to the Demandant; but in *Petire Cape*, he ſhall be Summoned to Answer to the default only, and not to the Demandant, and it is called a *Petire Cape*, becauſe it includes leſs then the other.

And if the Tenant by the return of the Summons, ſayes, the Demandant *adjourns* fifteen days longer, in ſuch caſe the Attorney for the Tenant, may ſue with the Philizer, that the Tenant appears and ſayes view, &c.

Then a Writ of view goes out, whereby the Sheriff ſhew the tenant the lands in queſtion, which ſuppoſeth the tenant knows not well what lands it is that the Demandant asketh, by the return of which writ

of View, the Tenants Attorney takes a Declaration.

NOte that where a default is made after appearance, there a *Petite Cape* is to issue forth at the Demandant his Suit which is made, as likewise the *Grant Cape* by the Philizer of the County where the Land lieth.

The form of the Summons is thus.

THE Keepers of the Liberty, &c. to the Sheriff L. greeting, command J. D. that unjustly, &c. herender E. D. the third part of ten Messuages, five Cottages, two hundred acres of Land, three hundred Acres of Meadow, and two hundred Acres of pasture in C. and B. as her Dowry, by the Endowment of G. D. in time past her Husband, &c. whereof she hath nothing, &c.

In case the Tenant appeare upon the Summons, &c. then you declare as follows.

Lincoln. ff.

E. D. Widdow, which was the Wife of G. D. by E. B. their Attorney, demands against J. D. the third part of ten Messuages, five Cottages, and two hundred Acres of Land, three hundred Acres of Meadow, and two hundred Acres of Pasture with the pertenuances in C. and B. &c. as the dowry of the said E. D. by the endowment of E. D. in time past her Husband, &c.

To this Action there may be severall Pleas, as the case may require.

The most generel plea is, (*Ne unques seizi que l'on me*) that is to say, that the husband was never seized of any Estate whereof the Wife can be endowd the form whereof is as follows.

Ne unque seize que Dower, pleaded in Dower.

AND the aforesaid Defendant by A. B. his Attorney, comes and sayes, that the aforesaid A. ought not to have her Dower of the Messuage and Tenements aforesaid, with the Appurtenances thereof, &c. of the Endowment of the aforesaid D. once her Husband &c. Because he saith, that the aforesaid D. once her Husband, &c. neither at the day wherein he married the aforesaid A. nor at any time after, was seized of the same Messuage and Tenements, with the Appurtenances thereof &c. of such an Estate, so that the aforesaid A. might thereof be Endowed.

And of this he puts himself upon the Countrey, and the plaintiff in like manner; therefore command is given to the Sheriff, that he cause to com here twelve &c.

There is a Plea likewise of *Non-tenure*, which is as follows.

Non-tenure pleaded in Bar of Dower.

AND the Defendant by J. D. his Attorney, comes and sayes, that he cannot render the aforesaid A. her Dowry of the Mannor aforesaid with the Appurtenances, because that he is not thereof Tenant, as of the Free-hold, nor was the day of the issuing forth of the original Writ of her the said A. nor at any time after; and this he is ready to aver; whereupon he prays Judgement of the writ aforesaid, &c.

Issue upon the non-tenure.

AND the aforesaid A. saith, that the Writ aforesaid for the reasons before alleadged, ought not to be quashed, because she saith that the day of the issuing forth of the Originall Writ of her the said A. (to wit, such a day and year) the aforesaid Defendant was Tenant of the Mannor aforesaid with the Apputtenances, as of his free-hold, as by the same writ is supposed: and this he prayes may be inquired by the Country, and the aforesaid Defendant in like manner; therefore command is given to the Sheriff, that he cause to come here twelve, &c.

Also *Nonage* may be pleaded in bar of Dower, and then it is *thus*.

Nonage in Bar of Dower.

BND the aforesaid R. M. by T. G. his attorney, comes and sayes, That the aforesaid N. ought not in this behalf to have Dowry, because he saith, that the aforesaid N. at the time of the death of the aforesaid R. in time past her Husband, of whose Endowment, &c. she was not of that full age, that she should observe Dowry, that is to say of nine years and a halfe: And this he is ready to aver, whereupon he prayes Judgement, whether the aforesaid N. ought to have her Dowry of the Tenements aforesaid with the Apputtenances, &c.

Issue full of Age.

AND the aforesaid N. saith, That shee the aforesaid N. was at the time of the death of him
t he

the said R. in time past her Husband, &c. of such age as that she might deserve Dowry; that is to say nine years and a halfe and above, and this she praves may be required of the Countrey, and the said R.M. in like manner, &c. Therefore command is given to the Sheriff that he caule to come here twelve &c.

Elopement may also be pleaded in Bar of Dower, and then it is thus.

Elopement in Bar.

AND the aforesaid I. and L. by T. L. his Attorney com s and sayes, that the aforesaid R. and A. ought not to have against them the Dowry aforesaid, of the Mannor and Tenements aforesaid, with the Appurtenances, of the Endowment of the aforesaid E. in times past her Husband, &c. Because they say, That the aforesaid A. in the lite time of the aforesaid E. in times past her Husband, &c. of her own voluntary wil and accord at B. in the county of M. left him the said E. in time past her husband, and went from him with one R.M. in the Parish of S in the County of M and after there with the same M. did lead her continued life in Adultery, during the life of him the said E. in time past her Husband, &c. without that, that the aforesaid A. to the said E. her Husband, in the lite time of the said E. in time past her Husband, &c. was reconciled unto him, and this they are ready to aver whereupon they pray Judgement, whether the aforesaid R. and A. in this behalte, ought to have her Dowry, of the Mannour and Tenements aforesaid, with the Appurtenances of the Endowment of the aforesaid E. in time past her Husband, &c.

Reconcilement Pleaded to the Elopement.

AND the aforesaid R. and A. say, That they by any thing before alledged, ought to be debarred from having the Dowry of the aforesaid A. of the Mannor and Tenements aforesaid with the Appurtenances, against them the aforesaid I. L. because they say, That after the departure aforesaid, by the said I. and L. supposed to be made, the aforesaid E. in his life time, her the said A. of his own accord, and without Ecclesiasticall compelling, at L. did reconcile, and suffered her to live with him; and this they are ready to aver; whereupon they pray Judgement, and the Dowry of her the said A. of the Mannor and Tenements aforesaid with the Appurtenances, together with their damages, by reason of the Detainer of the Dowry aforesaid, to be adjudged unto them, &c.

Issue upon the reconcilement.

AND the aforesaid J. and L. say, That the aforesaid E. in his life-time, did not reconcile in mannor and from, as the aforesaid R. and A. have above alledged, and of this they put themselves upon the Countrey, and the aforesaid R. and A. in like manner; therefore command is given to the Sheriff, that he cause to come here on three weeks after the Holy Trinity, twelve, &c.

A man may call to warranty in Dower, and then is the party called to Warranty, summoned in the County where he lies, and that by the aid of the Court, and this is called a Counter-plea of the Voucher in Dower, and is thus.

Counter-plea

Counter-plea of the Voucher in Dower.

AND the aforesaid J. by C. B. his Attorney, comes and calls thereupon to warranty R. C. Gentleman, summoned in the County aforesaid, by the ayd of the Court, &c.

To this the Defendant may reply, that the party calls to warranty, hath nothing in the Lands, &c.

And the aforesaid I. saies, that neither the aforesaid R. whom &c. nor any of his Ancestors, had any things in the Tenements aforesaid with the appurtenances, in his Demesne as of a Fee, in Reversion, or &c. from the time of the death of the aforesaid W. C. in time past her Husband, &c. unto the day of the issuing forth of the originall Writ of her the said I. to wit, (such a day and yeare) so that he could thereof Enfeoff the aforesaid John, or any of his Ancestors: And this he prayes may be inquired of by the Country, and the aforesaid John in like manner; therefore Command is given to the Sheriff, that he cause to come twelve, &c.

An Annuity may also be pleaded in Bar of Dower but is too long here to recite.

To this Action, in case the Tenant have no special matter to plead in Bar, then he may confesse the Action by *Non sum informatus*, or let it passe by default as in the ensuing.

Non informatus in Dower.

AND the aforesaid E. by T. S. his attorney, comes, and the same Attorney sayes, that he is not informed by the said E. his Clyent, of any answer for the aforesaid E. to the aforesaid P. S. in the

the Plaintiff aforesaid to be given, and nothing other he thereupon saith, by which the same P. S. should remain against the aforesaid E. thereupon undefended: Therefore it is considered, that the aforesaid P. S. shall recover her seizure against the aforesaid E. of the third part of the Mannor, Park, Free-Warren, Tenements, and Advowson aforesaid, with the Appurtenances, and the aforesaid E. in mercy, &c.

And upon this the aforesaid P. S. prayes the Writ of the Keepers of the Liberty of England, to the Sheriff of the County aforesaid to be directed to cause him to give her full possession of the third part aforesaid with the Appurtenances, and it is granted unto her, returnable here in eight daies after Saint Michael, and also the same P. S. sayes that the aforesaid T. in time past her husband, &c. died seized of the Mannor &c. in his Demesne as of a Fee and of the Advowson aforesaid, as of his Fee and Right, and prayes the writ of the said Keepers of the Liberty, &c. to the Sheriff of the County aforesaid to be directed, to inquire of damages, and it is granted unto her returnable at the aforesaid Term.

Note that in this, as other real Actions, when you plead for the Defendant, you say only (comes and sayes) and not as in other Actions, Denies the force and injury, &c.

VWhen upon issue joyned you would go to trial, you must proceed with your *Venue facias*, and *Habeas corpora*, and Record, as in other Actions, and upon trial the Jury do give in damages for the main profits from the death of the Husband, and for that you shall have Execution made by the Clerk of the Judgements who enureth up your Judgement.

And then you have a writ to the Sheriff, to give possession of a full third part, &c. which Writ being executed by the Sheriff, is thus returned.

BY vertue, &c. and to the Schedule annexed (such a day and year) I have caused to be delivered to J. B. Widdow in the aforesaid writ, named, plenary seizin of the third part of the manner of L. with the Appurtenances in the same writ specified (*Viz.* and rehearse the particulars in the writ) to be held to the aforesaid I. B. in severalty, by meets and bounds, in the name of the whole Dower of her the said I. B. to her the said I. B. contingent of her whole manner in the Writ specified, as by the Writ aforesaid to me is commanded, &c.

Formedon.

In the next place we come to treat of an Action called Formedon; which is a reall Action, and that is in three wayes.

THE first is *Formedon* in the Descender, which lyeth where Tenant in taile enfeofed a stranger, or is disseized and dyeth, the Heire shall have a Writ of *Formedon* to recover the estate.

The second is *Formedon* in the Remainder, and that lieth where one gives Lands in the taile, and for default of issue, the remainder to another in taile, and that for fault of such issue the land shal revert to the Donor if the first Tenant in taile dye without issue, he in the Remainder shall have this Writ.

The third is a *Formedon* in Reverter, and that lyeth, where the Tenant in taile dies without issue, and he in the Remainder dies also without issue, then the Donor or his Heires, shall have a *Formedon* in Reverter.

Where

Where Tenant in taile aliens or is disseized, or if a Recovery be had against him by default, and then he die, his Heire shall have a *Formedon*; for the Heire shall not have other recovery for the possession of his Ancestor then, by *Formedon*; but if he be outed of his owne possession, as if he be seized & put out, he shall have this Writ of *Assize*.

Formedon lies by the Heire of a gift made before the Statute of *Westminster 2.* where the Donee after the statute aliens and dies.

Where there is a Tenant in Dower or by the Curtesie.

The Reversion to another in taile, if one intrude after the death of the Tenant in Dower, or by the Heire of Curtesie, he in the Reversion shall not have intrusion, but a *Formedon*.

Woman in taile takes a Husband, which aliens, and after they are divorced, and after the Wife dies, the Wife shall in this case have a *Formedon*, and not a *Cui in vita*.

If Tenant in taile lets for life, and the Tenant for life aliens in fee, the Tenant in taile shall have a *Formedon* at his pleasure.

Where Land is given to one for life, the Remainder to the Father in taile (if it were executed in the Father) and he aliens; the issue may have a *Formedon in Discender* generally, or may have a special writ making mention how it was given for life, the Remainder to his Father in taile, and one or other is good.

In conveyance of degrees, you need not name him Heire, but son of him which was not seized; but it is a surer way to name him son and heir to every one, if he were seized or not; but he cannot omit any in his Writs which were seized.

If the Demandant omit in *Formedon*, one who held the

the Estate, that is to say, who was seized, the Writ shall abate.

The Demandant in this Writ ought to make his descent by all which hold the Estate, otherwise the Writ shall abate.

Though the Demandant be made Heire to him which died in the life time of his Father, which was not seized, yet the Writ shall not abate, but is good.

Note by the Register it is held, that he ought to make him sonne to every one, and sonne and heire to him which last holds the Estate; but if he makes him sonne and heire to every one, that is more, and good, notwithstanding that evry one did not hold the Estate.

The Writ is not the worse, although in the same it be mentioned that he is Heire of one, or that he should have scarce been heir to him if he had lived, if he be heire to him that last was seized.

The Demandant in *Formedon*, ought to name him son and Heir to him that was seized, but if one survived his Father, and were not seized, he need not name himselfe Heir but son only.

Formedon did abate, for that the Demandant made himselfe Cousin and Heir to the Donee where his Father was seized after the death of the Donee, and no mention was made of him.

Esplees shall be alledged in *Formedon in Reverter*, in the Donor and in the Donee, and in *Formedon in Descender*, and Remainder in the Donee only.

Those Esplees is as it were the seizin or possession of a thing, Profit, or Commodity, that is to be taken as of a common, the Esplees is the taking of the grass or common by the mouthes of the Beasts that Common there; of an Advowson by taking the grass, tithes by the Parson presented thereof; of wood the

the selling of Wood, of an Orchard, the selling of Apples, and other fruit growing there: Of a Mill the taking of Toll is Esplees, and of such like.

NOte that in a Writ of Right of Land or Advowson, &c. The Demandant ought to alledge in his Declaration that he or his Ancestors took the Esplees of a thing in demand, or otherwise the pleading is not good.

Formedon in Remainder, he alleadgeth Esplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Esplees in the Donor, and it is good.

*Of what things a Formedon lyeth,
and of what not.*

FORMEDON lieth of Gorse, but not of an Advowson.

It lies of Pasture for ten beasts, or a certaine number, but not of common, for there a Writ called (*Quod permitta &c.*)

Formedon lies of common in grosse.

Formedon lies of a Corody, that is to say, of Rent and curtain breads, &c.

It lies for the Moiety, profit of a Mill, which is granted to one, and the Heires of his Body, and the Donee dieth, and his Heire is deforced of this profit now the Heire shall have a Writ of *Formedon* in the *Discender* for this profit.

The forme of the writ when it is in the *Discender* runs thus.

In the disceſſer.

THe Keepers, &c. to the Sheriff of L. greeting, command T. B. that, &c. he render I. C. the nu-
mer of the profits coming of two Mills of him the
said T. B. in M. which R. B. &c. gave to T. C. and
to the heirs of his Body issuing, and which after the
Death of him the T. C. &c. ought to descend,
&c.

If the Formedon be in the Remainder, then the
Writ runs thus,

In the Remainder.

THe Keepers of the Liberty, &c. to the Sheriff of
G. greeting, command A. that he render B. one
Messuage, & twenty acres of Land, &c. which C.
gave to D. and the heirs of his body issuing, so that
if the same D. died without heirs issuing of his body,
the aforesaid Messuage and twenty acres of Land,
with the appurtenances, should remain to the aforesaid
B. and his heirs, and which after the death of
the aforesaid D. to the aforesaid B. ought to remaine
by the form of the Donotation aforesaid, because the
aforesaid D. dyed without heir of his body issuing, as
his said, &c. unless, &c.

If the Formedon be in the Reverter then
thus:

In the Reverter.

The Keepers of the Liberty, &c. to the Sheriff of
G. greeting, command A. that he render B. one
Messuage and twenty Acres of Land with the Ap-
purtenances in G. which C. father of the aforesaid B,
whose

whoes Heire he is, gave to J. and E. his Wife, and to the Heirs of his body issuing, and which after the death of the aforesaid J. and E. ought to revert to the aforesaid B. by form of the gift aforesaid, for that the aforesaid J. and E. dyed without Heirs issuing of their bodies, as he sayes, &c.

This Writ is called a Summons, and hath nine Returns, betwixt the Test and the return, and the Proccesse are the same which are in Dower after the Summons, that is, a Grand Cape, Writ of View, and Petite Cape.

In this Action, as also in that of Dower, and other reall Actions, the Plaintiff is called Demandant, and the Defendant Tenant, and in mixt Actions, Plaintiff and Defendant.

Note that there is a great care to be taken by the Attorneys on both sides, in the course of casting Escoynes, adjourning, and entring *ne recipiatur* with the Clerk of the escoynes, and getting Non suits; for that thereby much prejudice or advantage may come to their Clients causes.

If we should now in this Action, as in that of dower, descend to the severall declarations, in order to the severall Formedons in discender, Remainder and Reverter, together with the various Pleas thereto, it would take up more roome, then can be spared in this little Tract.

Let it suffice that we told you that the Proccesse were much like to that in dower.

Lets proceed to Quare impedit.

Quare Impedit is a Writ, and it lieth where a man hath an advowson, and the Parson dieth, and another

another presenteth his Clark, or disturbeth me to present, then he may have the said Writ.

Affize of *Darreyn presentment* lyes, where I, or my Ancestors have presented before, and where a man may have an Affize of *Darreyn presentment*, he may have also a *Quare impedit*, but not contrariwise.

Also if the plea be depending between two parties, and be not discussed within six Monthes, then the Bishop may present by *Lapse*, and he that hath right to present shall recover his damages, as it appears by the Statute of *Westminster* 2. Chapter the fifth.

Also if one have right to present after the death of a Parson, and bringeth no *Quare impedit*, or *Darreyn presentment*, but suffereth a stranger to usurpe upon him, yet he shall have a Writ of right Advowson, but this Writ lyeth not, unlesse he claime to have the advowson to him and his Heires in Fee simple.

A *Quare impedit* may be brought by him who hath a Grant of the next avoydance.

It lies for the Moiety, or third part of the Advowson, and of the advowson, or Moiety of the third part.

It lyes for a Chantry which is a Donative, and he hath it by Letters patents, and that it be void, and he present to it his Clarke, who is disturbed by another, or another presented to the said Chantry, he which hath the Right, shall have his *Quare impedit*.

Formerly a *quare impedit* might be brought for an Abbey or Priory.

A *Quare impedit* lay likewise for an Hermitary, its brought formerly against the Bishop, together with others that claime or disturb: The form of the Writ generally is thus.

M



Quare

Quare impedit.

THE Keepers of the Liberry of England &c. to the Sheriff of L. greeting, &c. command A. B. that justly, &c. he permit T. L. to present a fit Parson to the Church of L. which is voide, and belongs unto his Donation, &c.

This Writ is a Summons at the Plaintiffs suite, and if there be two or three Defendants they may all eschoyn one after the other, and after they have eschoyned, your proceeds are the same, as in the Action of Partition by a *Pone* and *distringas*, which makes the proceedings of this action very tedious, the Defendant using all the possible delayes he can, for that most usually he hath gotten into possession, and so holds them Plea with their own Weapons, and gaines many times a year or two the profits of the Tythes.

But in case the Church be void, and that the Plaintiff do feare that the Defendant will get in, or formerly that the Bishop would Collate his Clarke, then he might have a Writ directed to the Bishop, which is called *Ne admittas*, and this Writ must be brought while the Action is depending in the Common Bench, whether by *Quare impedit*, or *Darreyne presentment*, and this Writ ought to be sued within the six Months after the voydance, for after the six Months he shall not have this Writ, for then the Living may be presented unto by *Lapse*, and therefore it is in vain then to sue this Writ, for that the Title of presenting is devoluted to the Bishop, but the King might sue this writ after the six Months, having a writ of *Quare impedit* or *Darreyne presentment* depending, according to that *Maxim*, *Nul lum templus occurrit Regi*, and the writ of *Ne admittas*, is as follows,

lowes, in case it were for the King in his time.

Ne admittas.

CHARLES by the Grace of God, &c. To the Venerable Father in Christ *VV.* by the same grace, Bishop of Winchester greeting. We prohibit you that you admit not any Parson to the Church of *S.* which is void, as it is said, & for the *advowson* whereof there is contention moved in our court between us and *A.* (If between private persons) then (between *A.* and *B.*) untill it be discussed in the same Court, whether unto us or unto the aforesaid *A.* it pertaineth to present unto the *advowson* of the same church, &c.

Note that the Defendant as well as the Plaintiff, may sue out this Writ, if the Defendant doe suppose that the Bishop will admit the Clarke of the Plaintiff, the suit depending; but as we said before, this writ of *Ne admittas* lyes not, unlesse the Plea be depending in court by *Quare impedit* or *Darreyn presentment*, and for that purpose there is a Writ in the Register, directed unto the chiefe Justice of the Common Bench to certifie the King in the Chancery, whether there be any Plea depending before him and his companions, by Writ between (such and such) and by this it seemed, that the *Ne admittas* should not be granted, before the King were certified in Chancery, that such a Plea of *Quare impedit*, or *Darreyn presentment*, were depending in the Common Bench. But at this time the course is otherwise, that the *Ne admittas* may be granted out of the chancery directed unto the Bishop, that he shall not admit, &c. before that the King be certified in Chancery, that such a Plea of *Quare impedit* or *Darreyn presentment* is depending in the common Bench.

And if the truth be that there is no such Plea depending in the Common Bench, then the party grieved may require the chiefe Justice to certifie the King in his Chancery, that no such plea is there depending, upon which the party grieved shall have a writ to avoid the *Ne admittas*.

If the Defendant or Defendants in this action do appeare, you must prepare your Declaration, wherein you must lay downe your Title, which many times causeth the Declarations and pleadings to be very long in this action, and therefore cannot be expected to be inserted here, as in other small ones.

In case after speciall pleadings, you come to an Issue and having your issue joyned, and your paper book made up, and that you would go to tryall, you must make your *Vanire facias*, which differs not from other *Venire facias*, but onely in these words (of a plea *Quare impedit*) and that made, signed, sealed, and returned, you must sue out your *Habeas Corpus*, and proceed with your Record, as in other.

When you have a verdict for the Plaintiff, and the *Postea* returned, and Judgement entred; you may then have a writ to the Bishop, to admit your Clark, or to the Metropolitan, which is as thus, when the recovery is had against the Bishop himselfe.

The King, &c. to the Venerable Father in Christ W. Bishop of *Winchester* greeting. Whereas T. L. Knight in our Court, &c. hath recovered against you his presentation to the Vicaridge of W. We command you, that at the presentation of him the said T. to the aforesaid Vicaridge, you admit a fit person, &c.

And if a man have his recovery against any other then the Bishop; then the writ that shall be made unto the Bishop shall be in this wise.

Whereas

WHereas T.L. Knight, hath recoverd against I.P. his Presentation &c. We command you that notwithstanding the claime of the aforesaid I.P. at the presentation of the aforesaid T.I. you admit a fit person, &c.

Note that upon this Writ he shall have an *Alias*, and a *Plures*, if the Bishop doth not execute the Writ, and an attachment against the Bishop if neede be.

Come we now to Actions of Waste.

THIS Action lies, where Tenant for Tearm of yeares, Tenant for Tearme of life, Tenant for Tearme of anothers life, Tenant in Dower, Tenant by the Curtesie of *England*, or Guardian in Chivalry, doth make waste or Destruction upon the Land, or Houses, that is to say, pulleth down the house, curteth downe Timber, or suffereth the house willingly to fall, or diggeth the ground, then he in the Reversion shall have a Writ for the Waste, and shall recover the place where the waste was done and treble damages against him that so committed waste.

But if a man cut downe Timber without License, and therewith repaire old Houses, that is held no waste, but if he therewith build new Houses, then the cutting downe of such Timber is waste also.

The cutting downe of underwood, or Willowes, which are no Timber, shall not be said to be waste; but where they grow in the sight and shadow of the house.

There are both negligent and voluntary Wasts, and these are alike punishable, as where the Tenant or Lessee is bound by Law to keepe the House in good repaire, as they were, when he came to them.

In this case if he do not so, but suffer any part of it by his negligence to grow ruinous, this is Waste, for which the Lessor, may sue the Lessee.

VWhere there is no Timber upon the Lands to make repaire, yet is it waste to suffer it to decay, for this, that the Tenant must procure Timber at his owne charge.

It is waste where a man prostrates, abates, or breakes down any of the housing, either the whole or part (that is) any of the principall VVals, or VVals of partition in Chambers, whether they be of stone or Mud.

VWhere by a violent tempest, &c. the house comes to be uncovered, it ought to be repaired by the Tenant in convenient time, otherwise it is waste, to suffer the house to be burnt by negligence, &c. is waste.

If the house be ruinous, when the Tenant first comes into it, and he pull it down and do not build it up again, this is waste.

VWhere a man either takes away, pulls, or breaks down the VVainescoets Doores, VVindowes, Benches, or any other things that are inseparable incidents of the house, being set up and fastned by the Lessor or Lessee or other, is waste.

What

*What is said to be Waste in Trees or
Woods.*

WHere there is Oake or Ash which are held Timber, in most Countries, (and Elme in some Countries where Timber is scarce) whether young or old, above or under twenty yeares of age to sell this, or to imploy it to build a new house or a new room, or any other purpose then to the re-
paire of the old house, or housing which are on the Land, or were at the time of the Leale, &c. in decay by age or tempest, is waste.

If a man sell Timber although with an intent for reparations, and if he after sell it or imploy it to any other use, this is waste, and if after sale he buy it againe, and then imploy it for Reparations, yet this hath been held to be waste.

Where a man sels Timber for Reparations, and so imploy it, yet if it be done at such an unseasonable time, as that the Timber dye in the roote, this is waste.

To cut downe Wood, and after to suffer Cattell to crop it when it is newly felled, whereby it is killed or to roote and stub it up, this is waste.

To cut downe Timber Trees for fire-boote, hedge-boote, &c. where there is enough of other boote, this is waste.

To cut downe such Trees for firing, as are fit for better use, being Timber and onely hollow, and dry at the top is said to be waste.

But if they be hollow, dry and dead throughout, that they bear neither fruits nor leaves in Summer, if the Tenant cut down such Trees for fire-boote, it is no waste.

To cut downe more for fire-boote, hedge-boote, and
Hous

house-boote, (to keep it as he found it) then is necessary, or to cut down green Wood when there is sufficient, dry, and dead wood, is waste.

To cut down Fruit-Trees, apple-Trees, or Pear-Trees, is waste, if they be growing in a Garden, although for Reparation, is waste.

Such Fruit-trees although halfe broken by the winde or otherwise, if they do yet beare Fruit, or the young springs of them, that may beare fruit, if the Tenant cut them downe, or pull them up, it is waste.

Where a man eares up deep Meadow, not plowed in mans memory, or grubs up wood by the roots and turnes it into rable, or on the contrary, turne a rable into wood, its waste.

To open or digge new Quarries, for Coale, Stone, Metall, Gravell, Lyme, Clay, or the like, this unlessse there be speeciall words in the Lease to warrant it, is waste, although it be not waste for a man to dig forward in a Myne that was opened before.

Its no waste to digge the Land, for Gravell, Clay, &c. For necessary reparations, &c.

HAVING gone thus farre in shewing what is waste, let the attorney be well advised he bring not an action of waste, where the Lease or other writing, by which the Tenant holdeth or claimeth, have not that clause in it (without impeachment of waste) in which case the Lessee can do no waste, &c.

For the unfolding of this clause (without impeachment of waste) observe that,

An impeachment of waste doth signifie a restraint from committing of waste, in Lands or Tenement, &c.

And this word (without) added to impeachment of waste intimates a Liberty to commit waste, and an Estate

Estate without any such restraint.

Those and the like words inserted in the Deed, &c. are said to be annexed to the Estate, and they doe change the quality of the Estate, and make the Tenant herein, in the nature of a Tenant in taile, and it adds that priviledge thereunto, that they give the Lessee a power and interest to make waste, and to dispose the things to his owne ule, and here if the lessor bring an Action of waste, the tenant may bar him with this clause.

If it be not those very words, or of the like sense, they are not good, for if the words be without impeachment of waste, by any writ of waste, the words in this case are more tyed up, and are not so large, they give not such a power to the tenant, nor alter the property, they only discharge the action, so that the Land-Lord can bring no action against the tenant for the waste done.

The words (without impeachment of waste) must be inserted in the same Deed, whereby the Estate is made, or another Deed made at the same time, for it be makes his lease without this clause, and after willeth that the Lessee should hold without impeachment of waste; its held those words worke nothing either to discharge the action, or give an Interest.

If a man make a Lease for life, and by his Deed grant that if any waste be done, it shall be redressed by Neighbours and not by suit or Plea, yet an Action of waste will lye.

This priviledge gained by those words, where it is may be lost, for it is annexed only to privity of Estate: And therefore if one that hath this priviledge annexed to his Estate, agree to change his Estate, the priviledge is gone, as where he that hath a Lease for yeares, with this clause in his Deed, accept

cept of a Deed of confirmation of his Estate without this clause.

The Processes incident to this Action are,

1. A Summons which is made by the Cursitor of the County, where the house or Land lyes.

This Summons is against a Tenant in Dowry, is as follows,

THE Keepers of the Liberty of *England*, &c. To the Sheriff of *L. &c.* It A.D. shall secure thee, &c. Then summon by good Summoners T.B. which was the wife of C. that she be before our Justices at *VWestminster*, on the morrow after the holy *Trinity*, to shew wherefore she hath made waste, sale, & Destruction, in the Lands, Houses, Woods & Gardens, which she holds in Dowry of the Inheritance of the aforesaid A. in N. to the disinherittance of him the said A. &c.

Neither in this VVrit nor in a VVrit of waste against a Guardian, a man shal not be tyed to rehearse the Statute which gives a writ of waste, for that very reason, that they were Actionable before the Statute.

If the writ be against Tenant for Term of life or of years, then it goes in this form.

THE Keepers, &c. if A. &c. VVherefore by the Common Counsell of the Commonwealth of *England*, It is provided that it shall not be Lawfull, for any to make waste, sale, or destruction, in Lands, Houses, woods, or Gardens; the said B. of Lands, Houses, and Gardens, in L. with the aforesaid A. demised unto her, &c. hath made waste, &c.

This writ being returnable on the day of three weekes after Saint *Michael*, the Defendant may if he please, Essoyn upon that return, which if he do, then
the

Plaintiff may adjourn it, unto the morrow after
at *Martin*, which if so, then the next Proceſſe is
to be made by the Phillizer of the
County, and may be made returnable in eight dayes
Saint *Hillary*.

Upon the returne of this *Pone*, and filing it with
the Phillizer, he maketh out a *Distingas* which you
may have returnable in eight dayes of the Purifica-
tion of the Blessed Virgin *Mary*, as we shewed before
the case of Partition, &c. And upon that *Distin-*
g you may have an Amerciament, in case the De-
fendant appeare not, and then an *Alias* and *Plures*
Distingas, and further Amerciaments. And as I told
you before in other Actions, in case the defendant es-
capes not upon the Summons, he may upon the *Pone*.
In case the Defendant appeare, and that you de-
clare; your form is as followes; in case it be against
a Tenant for years.

Wilt. ff.

A. Knight and Baronet, was summoned to an-
swer W. Earle of S. of a Plea wherefore, where-
by the Common Counsell of the Commonwealth
England, it is provided, that it shall not be Lawfull
any to make waste, sale, or destruction of Lands,
houses, Woods, or Gardens, to him demised for
Terme of life or yeares, he the said A. of houses in
which he held for Terme of yeares, by the de-
ceit of the aforelaid Earle, hath made waste, Sale,
destruction, to the disinherittance of him the said
Earle, and against the forme of the provision afore-
said, &c. and whereupon the same Earle by E. H. his
Attorney sayes, that whereas he himſelfe was seized
of one messuage with the appurtenances called B.
the same house in D. aforelaid in his Demelne as of
freehold, and being so thereof seized (such a day and
year)

yeare) at D. aforesaid, did demise the messuage aforesaid, with the appurtenances (amongst other things) to the aforesaid *Anthony*, to have and to hold to him the said A. and to his Assignes, from the Feast of Saint *Michael* the Arch-Angell then past, unto the end and tearme of twelve yeares thence next following, fully to be compleate and ended; by vertue of which demise, the aforesaid A. that Messuage with the appurtenances did enjoy, was thereot possessed, and he being thereof possessed the same A. made Waste, Sale, and Destruction of the messuage aforesaid with the Appurtenances, houses, that is to say, by throwing downe two Barnes the price of either of them twenty pounds, part of the messuage aforesaid above demised, and two houses called out houses, the price of each of them eight pounds, in like manner parcell of the messuage aforesaid, above, as aforesaid demised, and the Timber of the same Barnes and Houses so thrown downe, taking, burning, and selling, to the detrimentance of him the said Earle, and against the form of the provision aforesaid whereupon he saith that he is damnified, and hath damage to the value of one hundred and fifty pounds, and thereupon he brings his suit, &c.

And the aforesaid A. by J. D. his Attorney, comes and defends the force and injury when, &c. and whatsoever, &c. And by protestation that the aforesaid two Barnes, and two Out houses, were not parcell of the messuage aforesaid, to him the said A. the aforesaid Earle, in form aforesaid demised; protestation also, that the same Barn or Out-house were not of so much value as the said Earle by Declaration aforesaid hath above supposed, for he saith that he hath made no waste, sale, or destruction in the Messuage aforesaid: as the aforesaid Earle

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above against him declared, and of this he puts
Helfe upon the Country, and the aforesaid Earle
ke manner. Therefore command is given to the
riff that he cause to come there in eight dayes af-
the purification of the Blessed Virgin Mary, twelve,
By whom &c. And who neither &c. To recog-
&c. Because as well, &c.

Thus you have a Declaration in waste, and a Plea
ded to it, and Issue joyned, and this is against
nant for Tearme of yeares: now the Declarations
his action vary, as to the severall persons that
g the Action, and the severall persons against
om it is brought.

As where it is brought by the Heire in tail, against
nant for life.

Where it is against Tenant in Dower, as before you
in the Summons.

Also where the Purchaser of the Reversion brings
against tenant for yeares.

Also it may be brought after a Fine levied; in all
ch cases the Declaration must vary according to
Cause, in all which cases, as also in divers other
ceedings of other natures, I refer you to a Book
ted in Easter terme last, intituled, *Declarations*
pleadings in English, Collected by *Richard*
ownlow Esq; which would swell this small Tract
ond its intended bignesse.

Now as the Declarations are various, so are the pleas
ident to them, for they may be either generall
speciall.

The generall Plea is, no waste made, &c.

The speciall pleas are many, either in way of Justi-
fication, or excuse, as the case is.

It is a good plea if the waste be laid, to be in nor-
repairing, &c. That it was repaired before the action
brought, and this must be pleaded specially,

But

But to plead it was repaired after the waste brought, it is no good Plea.

It is a good Plea to any waste, that the Lessor hath authority to do it.

It is no good Plea to say, that the Plaintiff hath a covenant to deliver Timber from off the Land, and do it, and refused, for the Defendant, in this case to take it.

It is a good Plea to say, the Houle or Trees were burnt or spoyled, by fire, water, or winde, or that the ruine of them, was caused by some extraordinary accident of God.

It is a good Plea to say, that the house fell before the Lease, or that it was so extraordinary ruined, and the Timber so rotten, as that it would not be repairing.

It is a good Plea to say, that the Lease is surrendered to the Lessor, and he hath accepted it.

It is a good Plea that the Plaintiff hath entered on the Land, and before his such entry, there was no waste committed.

It is a good Plea to plead that the Plaintiff hath granted away his Estate, and before the grant there was no waste committed.

If the Plaintiff by good words do effectually lease the waste, this is a good Plea.

Where the Lease was made without impeachment of waste, it is a good Plea on the part of the Defendant.

It is no good Plea in this action for cutting down Timber, or pulling down the house, that the Lessee took away the Timber or materialls &c.

It is no good Plea, that the Lessor hath a covenant from the Lessee not to do waste.

It is no good Plea for the Tenant in an action of waste for cutting of Timber, to say, that he cut it to keep

still there shall be need, nor to say he cut it generally
or necessary reparations, unless he say withall that
he employed it to that purpose.

And yet it were but reason it should be justified to
it a little before it be used, for the drying of it
and making of it otherwise usefull, when an occasion
use apparrantly at hand.

It is a good plea for the Defendant to say, that he
it to make posts for inclosures, if he can withall
describe that there have been alwayes such inclo-
ures there.

But these and many other, may now at the Electi-
on of the Defendant be omitted, and by the late Act
of 22. October, 1650. he may plead not guilty or
some such other generall Issue may be pleaded, and
the speciall matter may be given in Evidence.

Upon these or any other Issue joyned, and that you
tend to go to tryall, the directions that were given
before in Partition, Dower &c. will guide you, both
for the making your *Venire, Facias, Habeas Corpora,*
and *Record*, and likewise for your tryall and return of
your *Poslea*, and entring of Judgement.

In this action as before you have heard, your Judge
sent is, that the Plaintiff shall recover the place
wasted and his treble damages.

In case the Defendant pleads not, but let it goe
by default or confesseth the action, then a Writ of
quarry is awarded, and upon that the Sheriff is to
require by the oath of twelve Jurors, what damage
the Plaintiff hath sustained, which he returns in an
quisition, & then the party hath Judgement to re-
cover the treble of it, and then hath he as in a
verdict after Judgement entred, a Writ of seizin a-
warded, which is directed to the Sheriff of the Coun-
ty where the house or lands lye, to give possession to
the Plaintiff of the place or places wasted, &c.

War-

Warrantia Carta comes next to be treated of.

Warrantia Carta is a writ that lies for him that is Enfeoffed with Warranty, and is afterwards impleaded in an Assize, or other Action, in which he cannot Vouch, then he may have his Writ against the Feoffor, or his Heire, to compell them to warrant the said unto them.

The Proesse in this Action are Summons in the following place which is as follows.

The Summons in Warrantia Carta.

THE Keepers of the Liberty of England, &c. command A. that justly, &c. he warrant to B. our Mesuage with the appurtenances in D. which he holdeth and claimeth to hold of him, and where he hath his Deed as he saith; and unless, &c. Otherwise that justly, &c. he Warrant to B. the Manor of N. with the appurtenances, and the advowson of the Church of N. which he holdeth, &c. And whereof he hath his Deed, or the Deeds of D. his Father or Mother, or any other of his Ancestors, whose Heire he is, as he saith, &c.

And although this Writ supposeth that he holdeth of the Defendant, yet is it not materiall whether he holdeth of him or no.

And also if the Plaintiff hold by Homage Avassor of the Defendant any Land, and is impleaded, and hath not any Deed of it, yet he shall have this Writ of Warrantia Carta against the Defendant, and the Writ will say, (whereof he hath his Deed) and yet he hath not the deed to shew, but onely holdeth by Homage

Homage Ancestrel, which imployes a warranty, and for this in this case, these words (whereof he hath his Deed) is not material.

If a man lease Land for term of life, rendering certaine Rent, or make a Gift in taile, rendering Rent without Deed, and the Lessee or Donee is impleaded, in such Action where he cannot vouch, then he shall have this Writ of Warrantia Charta, against the Lessor or Donor, or his Heire, who hath the Reversion; for this Reversion and Rent reserved, makes a Warranty in Law, by the Statute of Bigamis the last Chapter, although he had not any Deed of it.

If a man give Land to another in Fee, by deed, by these words, (I have &c. given and granted,) in this case, he shall be held to warranty of this Land to the Feoffee, by these words, and if Feoffee be impleaded, he shall have a writ of Warrantia Charta against the Feoffor by these words, (I have given and granted, &c.) but not against his Heire, for the Heire shall not be bound unto warranty by the deed of the Father, unless he oblige himselfe and his Heire to warranty, &c. by expresse words in the deed, as to say (I and my Heires all the aforesaid Lands, &c. will warrant, &c.)

Note that he shall not have this Action of warrantia Charta against the Feoffor, or against him against whom he hath Warranty, if he be impleaded in any action wherein he may vouch him; for then he ought to vouch him to warranty; and if he will not vouch him in the action, he shall not afterwards have a Writ of warrantia Charta.

Note that the Vouchee is either to defend the Right against the Demandant, or to yeeld him other Lands, &c. in value, and extendeth to Lands, &c. in Estate of Free-hold or Inheritance, and not to

any Chattell real, personall, or mixt, saving onely in case of a VVardship granted with VVarranty; in the other cases concerning Chattells, &c. the Voucher shall have an Action of Covenant, if he had a Dced: And an action of the case, or an action of deceit, if it be by word of mouth, &c.

The proccesse whereby the Vouchee is called, is Summons *ad warrantandum*, and whereupon the Sheriff returne that the Vouchee is summoned, and he maketh default, then there is awarded a *Magnum Cape ad valentiam*, &c. When if he make default again, then Judgement is given against the Tenant, and he to have over in value against the Vouchee; but if the Sheriff return that he hath nothing, then after a VVrit of *Alias* and *Plures*, a VVrit *Sequitur sub periculo suo* is awarded, &c. And the Demandant shall not have Judgement to recover in value, &c. because the Vouchee was warned.

In the case of *Honage Ancestrel*, which is a special VVarranty in Law, the Lands that the Lord had generally at the time of the Voucher, shall be liable to Execution in value, where he hath them by descent or purchase: But in the case of an expresse Warranty the Heire shall be charged but onely for such Land as he had by descent from the ancestor, which created the VVarranty.

Not the Lands of the Vouchee shall be liable to VVarranty, that the Vouchee hath at the time of the Voucher, for that the Voucher is in lieu of an Action, and in a VVarranty Cherta, the Land which the Defendant hath at the time of the VVrit brought, shall be liable to the VVarranty.

If a man give Lands in Fee with VVarranty, as he bindes certain Lands especially so warranty, the person of the Feoffor is hereby bound, and not the Land.

unless he had at the time of the Voucher.

A man may bring his Writ of Warranty of Charters, &c. in what County he will, if the Deed bear no date at a certain place or County, for then he ought to bring the Writ where the Deed bears Date.

But if a man bring a Writ of *Warrantia Charta*, by reason of Homage Ancestrell, &c. then he ought to bring the Writ in the County where the Land lies.

The Summons in this Writ we have shewed you before, upon which Writ as in the case of waste, the Defendant may essoyne, & the Plaintiff adjourn; and for want of an adjournment of the Plaintiff, the Defendant may enter a Non-suit against the Plaintiff, provided there were a *receptum* first entered with the Clerk of the Essoynes, upon the day of Exemption, and then in that case the Plaintiff is put to begin again.

After the Summons comes a *Pone*, and then a *Distingas*, and if the Defendant appear not, an *Alias Distingas*, Setting Issues &c. And so *Distresses in Infamiam*, till there be appearance given.

In case the Defendant do appear, then you may declare as in the form following.

The Declaration in *Warrantia Charta*.

Lincolne, H.

EA. was summoned to answer H. B. Clarke, of a Plea, that he warrant to him three Mesluages, &c. with the appurtenances in C. which he holdeth, and claimeth to hold of him, and whereupon he hath his Deed, &c. and whereupon the said H. by J. W. his Attorney, saith, That whereas a certain fine was

levied in the Court of the Keepers, &c. here, that is to say, as Westminster, from the day of Saint Hillary in fifteen daies (such a yeare before O. S. *John* and others, naming them) then Justices of the Common-Bench here, that is to say, at Westminster aforesaid; and other faithfull persons then being present, between him the said H. B. Plaintiff, and the aforesaid, E. and one *Jone* then his Wife, and R. H. Detorcients of the said three Messuages, &c. with the Appurtenances, whereof the Plea or Covenant was summoned between them in the same Court, that is to say, That the aforesaid E. I. and R. did acknowledge the aforesaid Tenements, with the appurtenances to be right of him the said H. B. as those which the said H. B. had of the gift of the aforesaid E. J. and R. and the same remised and quite claimed, from them the said E. I. and R. and their Heires, to the aforesaid H. B. and his Heirs for ever, and moreover the said E. granted for himselfe and his Heires that they would warrant the aforesaid H. and his Heirs, the aforesaid Tenements, with the appurtenances against all men for ever. By vertue of which fine the said H. B. was seized of the Tenements aforesaid with the appurtenances in his Demesne as of Fee, and he the said H. B. so being thereof seized one I. D. arrayed against him the said H. a certain Assize of novel disseisin of the tenements aforesaid, with the appurtenances before P. W. one of the Justices of the Common Bench, and R. C. one other, &c. Justices assigned to take the Assises in the Countrey of L. aforesaid, which said Assise depending, he the said H. often required the aforesaid E. that he would warrant to him the tenements aforesaid with the appurtenances; yet the said E. hitherto hath denied to warrant to the said H. the tenements aforesaid, with the

the Appurtenances, and yet doth deny; whereupon he saith he is damnified, and hath damage to the value of five hundred pounds, and thereupon he brings his suit, &c.

The Defendant acknowledgeth the Action.

AND the aforesaid E by J. E. his Attorney comes, &c. and saith, that he cannot deny the aforesaid action of the said H. neither but that the writing aforesaid is the deed of him the said E. not but that he did give and grant by that writ to the said H. and his Heirs the tenement aforesaid, with the appurtenances; neither, but that he by that writing is held to warrant the said H. the tenement aforesaid with the appurtenances in the forme in the which the said H. hath above declared against him; therefore it is considered of, that the said E. shall warrant to the said H. the tenement aforesaid with the appurtenances for the place and time, and nothing of being in mercy of him the said H. because he came the first day by summons, &c.

Here you have a Declaration and judgement by confession.

NOt if a man recover his warranty in *Warrantia Charta*, and after he is impleaded in an action in which he cannot vouch as by Assize, or by *Scirefacias* upon a fine, now it seems that he ought to give notice to him against whom he had recovered his warranty of his action, and to pray him to shew what plea he will plead to defend the Land.

NOte that a man may bring a Writ of *Warrantia Charta* at the Common Law, for warranty made of Lands holden in ancient Demesne.

*Having gone through Warrantia Carta,
we now come to Audita Querela.*

What the Writ is.

Audita Querela is a V Writ, and lieth where one is bound in a Statute Merchant, Statute Staple, or Recognizance, or where Judgement is given against him for Debt, and his body in Execution thereupon, then if he have a release, or other matter sufficient to be discharged of Execution, and hath no day in Court there to plead it, then he shall have this V Writ against him that hath so recovered, or against his Executors.

*Against whom, and for whom this Writ is
brought.*

This Writ lieth for the party himself against whom the Judgement is had, by whom the Statute is made, or his Heir, Executor, or Administrator, upon whom the charge is come, or coming. Sometimes it is to be had against the prosecutor himself, and sometimes against him and others that ought to bear a part of the burthen with him.

It lies against a Ter-Tenant, without naming him Party, or Privy.

Wheresoever this remedy is given, there must be these three things in the case.

1. There must be a charge or burthen come, or coming upon him that is to have it.

2. It must be such a Charge, &c. as by Law he ought to be discharged of, in part or in whole.

3. It is such a case as where he hath no other remedy for his release.

Th. 6.

These following Cases will cleare these particulars.

If a Judgement, or Judgement, and Execution be had against one, and the Plaintiff release him of the Debt in Fact, or that he be released of it all, or part of it in Law, and yet he sue without Execution.

If a Judgement be had against me and another, and one of us be taken in Execution, and afterwards released of the Debt, or discharged of the Execution by the Party himselfe, the other may take advantage of this.

If Judgement be against two Trespassors, and one taken, and the damage satisfied by him.

The like Case if a Judgement be against two or more, upon one bond, and Execution is done upon, and satisfaction made by one of them.

If Executors sue for, and recover a debt, and after the Testament is revoked, in this case, the Party that hath paid the money, may get the same certified by the Bishop, and then he shall have his remedy against the Executors.

If the Conusor after Execution render the money due upon the Statute to the Conusee, and he refuse it, or if part of it were paid at the day, and he tender the rest in Court, and yet the conusee go on to extend it, in these cases the party grieved may have this remedy.

If the Statute were delivered to a Stranger to keep till certain conditions were performed, and he doth deliver it to the Conusee, or he doth get it by fraud from him, before the conditions be performed, in this case he shall be relieved by this Writ.

If an Infant enter into a Statute, he may avoid it whilst he is in his Minority by this Writ, and the course is this, in case he be in prison, this Writ may be sued out by some of his friends to the Justice,

who thereupon command the Sheriff to bring the Infant into Court to be seen; and if the Judges judge him to be within age, after proceſſe ſent to the Conuſſee, they will diſcharge him. But if one that hath been an Infant be ſued upon it, after he is of full age, this Writ doth not lie for him.

If divers be bound by one ſpecialty *Conjunctim* and *diviſim*; and the Obligee get Judgement and Execution againſt one of them, and after ſue the Eſpecialty againſt the other, he ſhall have this Writ for his relief.

If in the Interim betwixt Verdict and Judgement, the parties have put themſelves into abitrement for the Suit, or the Defendant get a releaſe from the Plaintiffe, and yet the Plaintiffe doth proceed, the Defendant may have this Action; but where theſe Caſes are put, it's to be conceived before the Writ brought, that Judgement is given.

Where a man ſues for a thing, for which he had formerly Judgement and Execution, there this Writ lies,

Where a man and his Heirs are bound by any Bond or Bill &c. and the Obligee ſue it, and recover againſt the Heirs, and after ſue the Executors for the ſame cauſe; or on the other ſide after recovery had againſt the Executors, he ſue the Heires, here the Heire or Executor ſo ſued may have this remedy for that he cannot Plead it in Bar.

Where a Leſſee covenants for him and his aſſigns, to reſpaire Houſes, or to do any other thing chargeable upon him, after Aſſignment of his Eſtate, and he Aſſigne his Eſtate, and after the Leſſor, who may ſue either of them, ſue and recover againſt one of them, in this caſe, if after he ſue the other for the ſame cauſe, he may have the ſame remedy.

The proceedings in this Action are as follows.
Where

Where before Execution this Writ is brought by the party grieved himselfe, or by his Heirs or Executors, he surmising good cause for this Writ, must give good Baile to prosecute, and stand to the Judgement of the Court, upon which he may have a *Superfedeas* to stay Execution; but when the party is in prison, then it seems there is no Baile put in, till the Conusee or Obligee answer in the *Audita querela*.

Note that after Execution executed, no *Superfedeas* doth lie.

The procelle before Execution are a *Venire Facias* and an *Alias*, &c. And then if he come not in, the use hath been that upon motion, the party in prison may be discharged.

After those Procelle a *Distingas*, and upon default after appearance, and a Plea pleaded, a *Distingas ad audiendum judicium*; for by such default Judgement shall be given against him, and after Execution the Procelle is a *Scire facias*, when the party is in prison upon a *Capias ad satisfaciend*.

Where a man puts in Baile, in this Action, he shall not be discharged of this Baile, but must continue till the Suit by the [*Audita querela*] be determined; for albeit the Party do not prosecute after the appearance of the Defendant, yet he must continue in prison, or stand upon his Baile.

If a man be non suited in one [*Audita querela*] yet he may have another, but he shall have no *Superfedeas* in the second, as he had in the first.

Audita

Audita querela upon the Statute of Usury.

IT was commanded to the Sheriff, &c. Whereas
 of the grievous complaint of T. B. of &c. R. B.
 &c. and A. A. of &c. it was shewed to the Keeper,
 &c. complaining, that whereas in the Statute in the
 Parliament, held, &c. (reciting the Statute of Usury)
 as by the said Statute more fully appeareth. And
 whereas one N. VV. such a day & yere at C. did lend
 unto one R. B. ninety pounds, for one yere then next
 following, and that in consideration thereof, it was
 then and there agreed, between him the said N. VV.
 and the aforesaid R. B. that the same N. VV. should
 have by way of gaue and profit for deferring and
 giving day of payment of the aforesaid ninety pounds,
 for the time aforesaid ten pounds, to be paid to the
 said N. VV. together with the aforesaid ninety
 pounds, and also eighteen yards of blacke Fuzes,
 of the price of every yard sixteen pence, which
 said R. B. afterwards, that is to say, such a day and
 yere at C. aforesaid, made this Testament, and ap-
 pointed and ordained Agnes, the wife of the aforesaid
 A. A. and one T. Bartram, L. B. and L. B. his
 Children, Executors of his Testament aforesaid,
 and the same A. A. and one VV. L. Gentlemen,
 Guardians of the aforesaid T. B. Son and Heir
 apparent of the said R. B. during the minority of
 the aforesaid T. B. and afterwards there died, after
 whose death, that is to say, such a day and yere,
 at C. aforesaid, it was agreed between him the
 said N. VV. and the same A. A. and W. L. that the a-
 fforesaid N. VV. should defer & give day of payment
 of the aforesaid ninety pounds, of the principall
 Debt, and of the aforesaid ten pounds, for the use
 aforesaid, from the end of the aforesaid yere, for
 the

the payment thereof as aforesaid, before agreed
on till Wednesday next, after the feast of Easter, then
next following, and that the said A. A. and VV. L.
or one of them would pay to the said N. VV. six
pounds thirteene shillings and foure pence for
fine and use, for deferring and giving day of pay-
ment of the same ninety pounds of principall Debt
aforesaid, and ten pounds for the first use, afore-
said, and also that T. A. and VV. L. and the afore-
said T. B. and R. B. should by Recognizance ac-
knowledge before R. M. then one of the Iustices,
or themselves to owe to the aforesaid N. VV. foure
hundred pounds, for the secure payment of the a-
foresaid ninety pounds of principall Debt aforesaid,
and ten pounds for the first use aforesaid, and also
of the aforesaid six pounds thirteene shillings &
four pence for the said second usury aforesaid, on
the aforesaid VVednesday next after the Feast of Ea-
ster, between the houres of one and foure in the af-
ternoon of the same day, which said severall sums
in the whole, do amount unto one hundred sixe
pounds thirteene shillings and foure pence, where-
upon the said T. B. W. L. R. B. and A. A. (such a
day and yeare aforesaid) at C. aforesaid, before the
aforesaid R. M. did acknowledge themselves to owe
to the aforesaid N. VV. the aforesaid foure hundred
pounds for the secure payment of the aforesaid one
hundred sixe pounds, thirteene shillings and foure
pence on the aforesaid VVednesday next, after the
aforesaid Feast of Easter, according to the form, and
effect of the agreement aforesaid, and so that recog-
nizance in forme aforesaid acknowledged for the
payment of the said ninety pounds of principall
debt aforesaid, and of the aforesaid sixteen pounds,
thirteene shillings & foure pence for the use aforesaid,
exceeding the rates of ten pounds for a hundred
pounds

pounds by the yeare, by vertue of the Statute aforesaid published in the Parliament holden, &c. is void in the Law, as the said T. B. R. B. and A. A. by wayes and means convenient, are ready to make appear. Notwithstanding which the aforesaid N. W. now lately hath unjustly prosecuted Execution of the aforesaid foure hundred pounds, by the reason of the Recognizance aforesaid in forme aforesaid acknowledged against them the said T. B. R. B. & A. A. to the great damage & grievance of them the said T. B. R. B. & A. A. whereupon the said T. B. R. B. and A. A. to the Keepers &c. have supplicated to provide for them a fit remedy in this behalf, the said Keepers being willing to do herein that which is just and to exhibite full and speedy Justice therein to the said T. B. R. B. and A. A. hath commanded the Justices here that hearing the complaint of them the said T. B. R. B. and A. A. and calling before them the party aforesaid in this behalte to be called, and hearing their reasons thereof, they cause due and speedy accomplishment of Justice to be done to them the said T. B. R. B. and A. A. as of right, and according to the Law and Custome of the Commonwealth of England, ought to be done, and to that purpose, that they would cause to come here at that day, that is to say (such a returne) the aforesaid N. W. to answer in and upon the Premises, and further to do that which the Justices here shall think convenient, and consider of; and now here at this day (naming the returne) came as well the aforesaid T. B. R. B. and A. A. by W. B. their Attorney, as the aforesaid N. W. by L. C. his Attorney, and hereupon the said T. B. R. B. and A. A. say that the aforesaid N. W. (such a day and yeare) lent unto one R. B. ninety pounds for one yeare then next following, and that in consideration thereof, it was then and there agreed

agreed between him the said N. W. and the afore-
said T. that the said N. W. should have in gaine and
profit, &c. and so go on as before in the Writ, unill
you come to void in the Law. And this he is ready to
swear, whereupon he prayes Judgement, and that the
aforesaid N. W. may be barred from having his Exe-
cution aforesaid, by vertue of the Recognizance and
Judgement thereupon in Court here had; and that
the said T. B. and A. B. may be discharged thereof,
&c.

And hereupon the said N. W. prayeth liberty to
plead, &c.

NOte that if a man enter into a Statute or Recog-
nizance, which either is defective in it selfe or
is voydable by some Law, or because the contract
is usurious, as in the Declaration before specified;
or that there be a defeasance upon it, which is kept
from the Conusor, or that the Statute is delivered
up by the Conussee (which is a release in Law) and
the Conussee get it again, and the Conussee doth go
on in the execution of it, in all these cases the par-
ty grieved may have this remedy and Writ for his re-
medie.

If the Statute were made through hard imprison-
ment of the Conusor, he may have this Writ, &c.

NOte I. W. brought an [Audita Querela,] upon
the statute of Usury, to be relived in making
void a Judgement given upon a Bond, where he hath
pleaded that it was not his Deed, and it was disallow-
ed, and Judgement thereupon as followeth.

AND hereupon the Premises being seen, and by
the Justice here more fully understood, it seem-
ed to the same Justices here that the aforesaid Writ
of

of hearing the Complaint, & the matter in the same contained, was insufficient in Law to bar the said R. from having this Execution aforeaid, by reason of the Recognizance aforeaid: therefore it is considered, that the aforeaid J. W. take nothing by this Writ of hearing the Complaint, that the aforeaid R. may prosecute for the Execution, it, &c.

If a man sue for an *Audita querela* upon a Release, & afterwards he is Non-suit, he shall not have an *Audita querela* upon new matter, & yet the Law seems contrary to this, where it saies, he shall not delay Execution upon a new *Audita querela*.

If the Conusor after Execution tender the money due upon the Statute to the Conusee, and he refuse it, or if part of it were paid at the may, and he tender the rest in Court, and yet the Conusee goes on to extend it, in these cases the party grieved may have this remedy.

The Processes, as we told you in *Audita querela*, were *Venerificas*, *Distringas*, *Alias* and *Plures Distringas*, and yet take this further, that if the Sheriff returne, that he hath nothing, &c. Or that he cannot be found &c. Then he shall have a *Capias* against the Defendant.

Curia Claudenda. This is a writ which lies at Common Law, and is for reparation of Fences and Hedges, Mounds, &c.

THIS Writ lies where a man ought to inclose his Soyle or Land from his Neighbours, and will not do this, then he may have this Writ, and he may be sued before the Sheriff in this County Court.

or in the Court of Common Bench, If the Writ be before the Sheriff, then it runs thus.

THE Keepers, &c. To the Sheriff, &c. That justly, &c. he close his field in N. which is open to the inclosure of the Free-hold of B. in the same Towne, or in another Village, which he ought, and was wont to inclose, as the said B. says, and as he is reasonably able to shew that he ought to inclose it, &c.

It in the Common Bench, then the Writ is thus

THE Keepers, &c. Command A. that justly, &c. he close his field in N. which is open to the inclosure of the Free-hold of B. in N. aforesaid, which he ought, and was wont to inclose, and unless, &c.

This Writ may be removed out of the County, at the Suit of the Plaintiff without cause.

But if the Defendant will remove it, he ought to shew cause in the Writ.

And in the Writ to remove it by the Defendant, shall be this clause, (Let Execution of this Writ be made, &c. if the cause be true; otherwise not.)

This Writ lies not, unless against him who hath the close next adjoining unto the Land of the Plaintiff, and lies not, unless for him who hath an Estate of free-hold in the Land; for Tenant for Term of years shall not have this Writ.

If a man have a Common in a great waste, to him and his heirs, or for Term of Life, and he who hath the Land adjoining to this waste, who ought to inclose between the waste & his Land, will not make his inclosure, yet the Commoner shall not have this Action for the Damage which he hath sustained, &c. Although the Commoner may distress the Beasts, Damage

Damage feasant to the Land, which is his common? For the Writ supposes to the Nocument of the Freehold of the Plaintiff, which proveth that the Plaintiff ought to have the Land adjoining, if he will have this action.

The proceffe in this action is Summons, Attachment, and Distresse, &c.

The View lies in this writ.

If the Defendant appeare, and afterwards make default, he shall have a [Distingas] in lieu of a [petitio capie,] &c. and if he make default, at the day of the return of this writ, he shall have a writ to inquire of damages, and also a Writ to distraine to the Reparations.

If the party appear, and that you come to declare, take these observations.

IN your declaration you ought to shew the certainty of the Land, which the Plaintiff hath there adjoining unto the Defendant Land, and the certainty of the Land which the Defendants hath there adjoining, who ought to inclose, and then you ought to alledge prescription to inclose.

Parco fracto, or breaking the pound, comes next to be handled.

THIS Writ lies where a man distraines the Beasts of another mans, doing hurt in his land, or for Rent or Services behind, and sends them into the Common Pound, or into any other pound or place, which may be called a lawful Pound; and he which hath the property of the beasts, or another

the person take the beasts out of the Pound, and dri-
veth them to a place where he pleaseth: In this case
he that distrains for Damage done unto him, or for
Rent or Services behind, may have this writ where-
in he shall have Judgment to recover damages for it,
and to distrain the Cattel again wheresoever he shall
find them.

For this cause also is a person offending punisha-
ble in a Court Leet.

If a man command his servant to distrain for rent
or services arrear, and the servant distrain the beasts,
and put them in pound, &c. and a stranger take them
out of the Pound: In this case the Master, & not the
servant, shall have an Action of *Parco-fraetto*; for it is
the pound of the Master.

If a man distrain for Rent or Services, or for Da-
mage-feasant, and put the beasts in the Soile, or in
the close of his friend by his License, & he which owns
the beasts, takes them out of the close, here he which
distrains shall have this Action, and not he who
ought the close; for he which ought the close may
have his Action, *wherefore he brake his close, &c.*
For it is not his pound, but the pound of him that di-
straineth, &c. The form of the Writ is thus.

THE Keepers, &c. To the Sheriff of *Lincoln*, gree-
ting. If *A.* &c. then put, &c. *B.* to shew, where-
fore, whereas he the said *A.* in his Damage at *N. cer-*
tain cattell, or so the cattell of the aforesaid *B.* had
took, and them according to the Law, and custom of
the Common-wealth of *England*, had there impoun-
ded: The same *B.* the aforesaid pound by Force and
Arms brake, and the cattel aforesaid he took and led
away, and other harms to him he did, to the great
damage, &c.

Note here this Writ is by Force and Arms, and it
is not put in the Writ what manner of Beasts they
were

were, nor what number, nor to whom the property of the beasts are, unless at the pleasure of the Plaintiff.

Where a man commands his servant to distrain for Rent or Services, or for Damage-Feasants, the Writ is thus.

TO shew wherefore, whereas he the said A. in his damage of N. by B. his servant, hath caused certain bull, or certain cattel to be taken, and the same B. the said bull, or cattel, according to the law and custom of the Common-wealth of England, hath there impounded; the aforesaid C. that pound by Force and Armes did break, &c.

Where a man distrains for an Amerciament in a Hundred, and impounds the beasts, and the other party takes them out, the Writ shall be thus.

WHereas the said A. by B. and C. his bailiffs of the Hundred of N. certain young cattel of him the said F. at S. within the precinct of the hundred aforesaid, for a certain Amerciament, to which he the said F. was amerced in the same Hundred, to the use of the aforesaid A. to be levied, had caused to be taken, and the same B. and C. the same young cattel, &c.

Here in this Writ it ought to be shewed, that the property of the beasts were in him who was amerced for that, that he cannot distrain a strangers cattel for this amerciament.

But for rent or services arrear, it is otherwise, for there the party to whom those rents or services were arrear, may distrain what cattel he finds upon the ground, levant and couchant.

This Writ lies, albeit the impounding be unlawful, as where the party that is distrained for damage-Feasants

Feasant do offer sufficient amends after the taking, and before the impounding, and the party so distraining doth refuse it.

The like case of one that hath a Replevin, or other coloured authority (not good in Law) by vertue whereof he gets out the cattel.

Where a man hath a good authority, and breaks the pound before he demand the cattel of the Keepers of the Pound, and he do interrupt him in the taking of them; in all these cases the party grieved may have this Writ for his remedy.

The processes in this action after the Summons are attachment and distress infinite.

Rescues we come now to treat of, and the rather, for that it hath some relation to what I formerly spake of.

THE word Rescues is two wayes applyable, either to persons, or things.

To persons, and that is, when a man is arrested, and he himself, or another in his behalf doth rescue him.

The other relates to things, and of that we now treat, as having affinity to that of *Parco Fracto*, immediately before spoken of.

This is a Writ lying, where one, or his servant hath distrain for Rent-services, or Damage-feasant, or for any other cause; and being about to impound the digresse, another taketh it away from him, & will not suffer him to impound it; in this case the party or grieved may have this Writ for his relief against him that made the rescue, and shall recover damages for it.

Where a man distraines Cattell, and in driving

them to the pound, they get into the Owners house, and he doth withhold them from the distraining, and he will not suffer him to drive them to the pound, this is a Rescous, for which this Action lies.

If a man be coming to distrain, and the Owner drive away the cattel, and he that is about to distrain doth follow them upon a fresh pursuit, and the party will not let him have them, but drive them away; in this case he may have this Writ as his remedy.

But if before one be come in sight, the Owner drive out the cattel, or they go out themselves, so that he misseth of that Distreis he intended, this writ will not lye for this.

If the Lord distrain his very tenant without cause, and unjustly, and it be rescued, it seems this Action doth lye.

Note that if any other but the Lord do distrain upon his Tenant without cause, or out of time and place, in any of the cases before recited, this Action will not lye.

The Processees in this Action are as follows.

The first is a Summons, and then Attachment and Distingas and then Alias and Plures Distingas.

The Writ of *Summons* is thus.

THE Keepers, &c. to the Sheriff of L. &c. If A shall cause the, &c. Then put, &c. To shew wherefore, whereas he the said A. in his Damage at S. certain cattel, [or thus] the cattell of the aforesaid B. he took, and them according to the Law and Custome of the Common-wealth of England would have there impounded. The aforesaid B. the aforesaid cattel by Force and Arms he did rescue, &c. and other harms, &c.

If for services due as follows.

THe Keepers, &c. to the Sheriff, &c. If *A.* shall cause thee, then put, &c. to shew wherefore, whereas he the said *A.* in his Fee at *S.* for customs and Services to him due by *C.* his Servant, certain cattell, he caused to be taken, and them according to the Law and custom of this common-wealth of *England*, &c.

Note where a man distrains beasts, and dead chattels, there the Writ is thus,

To shew wherefore, whereas he the said *A.* in his Fee at *S.* for customs and services to him due, the cattell and chattels to him the said *B.* he took and those cattell he would have impounded, and the aforesaid chattels in the name of distresse, according to the Law and custom of the Common-wealth of *England*, he would have detained, he the said *B.* the same cattell did Rescue, and the chattels aforesaid from him the said *A.* he took, and other Harms, &c.

If the party appear not upon the Summons, then before you are to proceed to Attachment and Distresse infinite.

In case he appeare, you may Declare as follows;

Tork ff.

W. C. lately of *B.* in the County of *E.* Yeoman, and *W. B.* lately of *B.* in the County aforesaid, were attached to answer *I. C.* Knight, of a Plea, that whereas he the said *I.* in his Fee at *B.* for customs and Services to him due, by *N.T.* his Servant, had caused to be taken certain cattell, and the same cattell, according to the Law and custom of the com-

mon wealth of *England*, would have impounded there the said *W.* and *W.* the same cattel be force and arms did rescue, and other Enormities to him they offered, to the great damage of him the said *I.* and against the publick peace, &c. And whereupon the said *I.* by *I. W.* his attorney, complains that whereas he (such a day and year) in his Fee at *B.* that is to say, in one hundred acres of Land, called *W.* parcell of the Mannor of *B.* with the appurtenances in the County aforesaid, which *T. B.* then held of him the said *I.* as of his Mannour of *B.* in the County aforesaid by Homage, Fealty, and unto Escuage of our Lord the King, of forty shillings, when it shall happen 2s. and unto more, more, &c. And unto lesse, lesse, &c. and by the Rent of five and twenty shillings, each year, at the Feast of Saint *Michael* the Arch-Angel to be paid, as also by the service of doing suit to his court of Wapentage of *H.* in the County aforesaid, from three weeks to three weeks, at the Wapentage aforesaid to be held, and by the Sheriff-gild of five shillings every year at the same Feast of Saint *Michael* the Arch Angel yearly to be paid, of which said services, the said *I.* was seized by the hands of the aforesaid *T.* as by the hands of the true Tenant; that is to say, of the Homage, Fealty, and Suit of Court aforesaid; as of his Fee and Right and of the Escuage and Rent aforesaid in his Demesne as of Fee; and being so seized by the aforesaid *N.T.* his Servant, did cause to be taken certain cattell, that is to say, two Cowes feeding upon the aforesaid hundred acres of Land for the Rent, customes and Services, to him due and unperformed, that is to say, for the Homage and Fealty, and for the Rent, for five and twenty shillings, for one whole year, ended at the Feast of Saint *Michael* the Arch-angel (such a year) being in arreare, as al-

to for the Suit of the aforesaid court of Wapentage, held at H. aforesaid (such a day and year) undone, and the same N. the same cattell according to the Law and custom of the Common-wealth of England there would have impounded, they the said W. and W. the aforesaid cattel, the day and year aforesaid, at E aforesaid by force of Arms, that is to say with Swords, Staves, and Knives, they did rescue, and other harms, &c. And against the Peace, &c. whereupon he sayes that he is woisted, and hath damage to the value of forty pounds, and thereupon he brings his Suit, &c.

And the aforesaid W. and W. by H. D. their attorney comes and defends the force and injury, when, &c. and the aforesaid W. sayes, that he is in no wise guilty of the trespasss and rescue aforesaid, as aforesaid I. C. hath above declared against him, and of this he puts himself upon the Country, and the aforesaid I. C. in like manner, and the said W. B. as to the coming by force and arms, sayes, that he is in no wise thereof guilty, and upon this he puts himself upon the country, and the aforesaid I. C. in like manner. And as to the residue of the trespasss, and rescue aforesaid above supposed to be done, the said W. B. says, that the aforesaid I. C. ought not to have against him his aforesaid action, because he says that the aforesaid T. B. held not of the aforesaid I. C. the aforesaid hundred acres of Land, as of his manour of B. aforesaid by the services aforesaid, as the aforesaid I. C. by his declaration aforesaid hath above supposed, and upon this he puts himself upon the Country, and the aforesaid I. C. in like manner; therefore as well to the trying this issue, as issues above joyned, command is given to the Sheriff, that he cause to come here 15. days after Easter 12, &c. by whom, &c. & who neither

neither, &c. to recognize, &c. Because as well, &c.

HERE you have a Declaration against two, and the one pleadeth generally not guilty, the other not guilty, as to force and arms, and as to the residue he pleads *Non Tenure*, upon which you have an Iussie joyned in the cause, where if you were to descend to triall in any of the like nature, your course of proceedings must be as is formerly directed in other Actions.

In this action you recover damages and costs onely.

Affize comes now to be treated of, an Action which formerly was much in use, & although for the present not so much in practice, yet to preserve the knowledge of it, we shal here discover somewhat of the nature of the action, together with the proceedings thereupon.

Affize is a Writ, and it lieth, where a man is put out of his Lands, Tenements, or of any profits to be taken in a certain place; as of an Office, &c. and so disseised of his Free-hold (which Free-hold to any man is where he is seised of Lands or Tenements, or profits to be taken in Fee-simple, Fee-tail for Term of his own life, or for Term of another mans life) but Tenant by *Elegit*, Tenant by Statute Merchant, Tenant by Statute Staple, may have Affize, although they have not Free-hold, and this directed by divers Statutes.

IN an Affize it is always needfull that there be a Disseisor and a Tenant, or otherwise the Writ shall abate.

Also where a man is disseised, and recovereth by an Affize of *Novell disseisin*, and afterwards is again disseised by the same Disseisor, he shall have against him a Writ of re-disseisin directed to the Sheriff to

make inquisition, and if the Redisseisin be found, he shall be sent to prison. Also if one recover by an Assize of *Mortdancer*, or by any other Jury, or default, or by reddition, and if he be another time disseised, then he shall have a Writ *De post disseisin*, and he which is taken and imprisoned for redisseisin, shall not be delivered without speciall commandment of the King, see the Statutes thereof, *Merton*, Chapter the 3. *Marlebridge*, Chapter the 8. and *Westminster*, 2. Chap. the 26.

There is also another Assize, called an Assize of Fresh Force, and lyeth where a man is disseised of Tenements, which are devisable as in the City of London, or other Burroughs or Towns that be Franchises, then the Plaintiff shall come into the Court of the said Town, and enter his Plaint, and shall have a writ directed to the Mayor or Bailiffs, and thereupon shall pass a Jury in the manner of Assize of *Novell Disseisin*; but it behoveth that he doe enter his Plaint within forty days, as it is said, or otherwise he shall be sent to the Common Law, and if the Officers delay the Execution, then the Plaintiffe shall have another Writ to have Execution, and a *Sicnt alias*, and a *Plures*.

This Assize branches it self further into an, 1. Assize of *Dareyn presentment*, of which we have before spoken of.

2. Assize *de Mortdancer*.

An Assize of *Mortdancer* shall be brought in like manner, as an Assize of *Novell Disseisin* shall be, and in assize of *Novell Disseisin* before the Justices of the Common Bench, or of the Kings Bench, a certain day shall be put in there as unto Thursday after fifteen dayes after Easter, &c. But in an assize of *Mortdancer*, a common day shall be given, and fifteen days, &c. or in eight days, &c.

IN an assize of Novel disseizin in the Common-Bench, or in the Upper Bench, the Justices may give a day out of Term, so unto Thursday next after such a Feast, &c. for that an assize hath not any day of a day of return in the Term; but a certain day which the Justices will give him, and this may be as well out of the Term as in the term, and that by the Statute of *Articuli super chartas*, which directs that in every Writ of Summons and Attachment, there ought to be fifteen dayes between the date and the return of it: But in an assize of Novel Disseizin the common-Bench, or in the Upper-Bench there, there needs not to be had fifteen dayes between the date and the return of it, as it seems by the Statute.

In an assize of Novel Deseizin sued before Justices in Eyre, or before Justices of the Upper Bench, or of the common Bench, the Plaintiff need not to have any Patent to the Justices, for they have authority without Patent, and so have the Justices of assize authority to take assize of Novel Disseizin without any Patent made unto them, and that by the Statute of *westminster* 2 Chap. 13.

If the assize be brought in the Upper Bench, or in the Common Bench, then the Writ runs thus.

THE Keepers, &c. To the Sheriff, &c. Complaint is made to us by A. that B. unjustly and without Judgment, hath disseized him of his Freehold in C. after, &c. And therefore wee command thee, that if the said A. shall secure thee of prosecuting his complaint, then thou causest that Tenement to be reseized of the Cattell, which in it were taken, that the Tenement with the cattell bee in peace

peace untill Saturday, in eight dayes after Saint Michael, or unto Saturday next after the Morrow of All-souls next comming, &c. and in the mean time, then cause twelve free and lawfull men of that Vifage to see that Tenement, and imbreuiate their names, and so summon them by good Summoners, that they be before us at *Westminster* (if in the upper Bench) or before our Justices at *Westminster* (if in the common-Bench) at the aforesaid time ready to make recognition, and put by Sureties, and sure pledges, the aforesaid B. or his Baile, if he cannot be found, that he be there to hear that Recognition; and that you have there the Summoner, the names of the Pledges and this Writ;

If the Writ be brought before the Justices of assize, then the alteration is thus.

The Writ is all one with the former, till after the word (Peace) and then you say untill the next assizes, when your Justices shall come into those parts.

If the Writ of assizes be brought before others Justices then the Justices of assize in the same County, then the writ is as above, untill you come to the word (Peace) and then you say, untill a certain day, which our beloved and faithfull R. and F. shall make known unto you, &c. and in the mean time, &c. That thou summon them before the aforesaid R. F. and those whom we have associated unto them, at a certain place which the said R. and F. shall make known unto thee, ready thereupon to make recognition, &c. and put, &c.

Upon this Writ there ought to be a special Patent directed to the same Justices, for that they are not Justices of assize for that County.

If a man have Rent-service, Rent-charge, or a Rent-seck, issuing out of Land or Term of life, or in

in Fee-taile, or Fee-simple, if he be disseized of this Rent, he shall have a Writ of assize of his rent, and the Writ shall be general. That unjustly, &c. he did disseize him of his Free-hold in N. and he shall make his Title to the rent, &c. When he declares, &c.

A man may have an Assize of divers rents, or of Land and rent and Offices, and profits, to be taken in a mans Soile, and all in one Writ.

If a man have any profit granted unto him out of any Land for term of life, or in Fee, as to have the Fruits, whether Apples, Pears, Nuts or Achorns, or other profit whatsoever, he may have an assize of them, if he be deforced of them.

So likewise of a Toll of a Marker's, of a Passage or Ferry, of *Pontage* or *Parnage*, and other like things, he may have this Writ of Assize.

*What Seizin is sufficient to have
an Assize.*

SEizin of parcell of the rent is sufficient to have an assize of all the rent.

The Provost or Warden of a Colledge shall have an assize for rent, where his Predecessors was seized, and not he himself; for the Seizin of the Predecessor is the Seizin of the House. The same case of the Warden of an Hospital.

If a man which hath a Title to enter, set his foot upon the Land, and is outed, that is a sufficient Seizin to have an Assize.

If one put in his beasts to use any common by my commandement, this is a sufficient Seizin for me to have an assize.

Using of common by Tenant at will, is sufficient Seizin for him in the Reversion to have an assize of common, if he or his Tenant at will be disturbed.

Reversion was granted to I. S. and the Tenant for life attornes, and dies, and I. S. enters by the windows (for that he cannot enter by the doore) when one half of his body was in, he was pulled out, and yet that is a sufficient Seizin to have an Assize.

The Processe in this Action are Summons, Attachment and Distresse.

Where you are to declare, you may (in case it be for Common of Pasture) make the insuing your president.

Westmerland.

THE Assize comes to recognize, whether T. W. Knight, unjustly and without Judgment, have disseised Henry Earle of Cumberland of his Common of Pasture in R. which pertains to his Free-hold in R. within thirty years now last past, &c. And whereupon the said Earl by H D. his Attorney, complains, that the aforesaid T. W. hath disseized him of his Common of Pasture, to wit, For coming every year six times of the year, in five hundred acres of Pasture with the appurtenances in R. aforesaid, withall Horses, Oxen, Cows, Sheep and Swine, and other cattel in his Mannor of R. in the County of W. levant and couchant, which pertain to his Free-hold in R. that is to say, to his Mannor aforesaid.

And for the title of the common pasture aforesaid, and the Assize aforesaid thereupon to be had, the said Earl saith, That one H. lately Earle of Cumberland, and Father of him the said now Earl, whose heir he is, was seized of the Mannor aforesaid with the appurtenances in his Demesne as of Fee, and that

that he the said late Earle, and all they whose Estate the said late Earle in that mannour with the appurtenances had for the time, whereof the contrary is extant to the memory of man, have had, & have been accustomed to use, and have for themselves, and their Tenants for Term of life, years, or at will, of the Mannor aforesaid, and of every parcel thereof, common of Pasture, with all manner of Cattell aforesaid in the Mannor aforesaid, levant and couchant every year, all times of the year, on the aforesaid five hundred acres of Pasture, as unto the Mannor aforesaid pertaining.

And he the said late Earl of the Mannor aforesaid with the appurtenances, being so seised of such Estate, he dyed thereof seised, after whose death the Mannor aforesaid, with the appurtenances, did descend to him, the said now Earl, as to the Son and Heir of the said late Earle, by which he the said now Earle into the Mannor aforesaid, with the appurtenances, did enter, and was, and yet is thereof seised in his Demesne as of Fee. And being so thereof seised, he the said now Earle before the day of the issuing forth of the Original Writ of Assize aforesaid put his Cattell, that is to say, two oxen, and two horses, into the aforesaid Mannor, levant and couchant on the aforesaid five hundred acres of pasture, to feed upon the grasse there then growing, using thereby his common aforesaid, and the said cattell were eating the grasse there then growing, untill the aforesaid Writ before the day of the issuing forth of the aforesaid Writ; him the said now Earl of his Common of Pasture aforesaid, unjustly and without judgment he did disseize, as he above against him hath complained: And this he is able to aver, and thereupon he demands the assize.

And the aforesaid T. W. by J. P. his Attorney, comes, and saith, that he hath done no injury or damage to the aforesaid now Earle, of the Common of pasture aforesaid, in the aforesaid five hundred acres of pasture, in view, &c. put, and in the plain aforesaid specified; and upon this he puts himself upon the affize, and the said now Earl in like manner: Therefore the Affize is to be taken thereupon between them,

There are several pleas specially to be pleaded in this action, both in bar and abatement, which arise according to the Title on the Defendants part.

A lease for years, or for life, the reversion to the Plaintiff, or a Feoffment of the Plaintiffs, with warranty, and rely upon the warranty, is a good bar.

The Tenant may plead, that partition was made between the plaintiff and J. S. whose Estate he hath, and it is a good bar.

If the Plaintiff choose one to be his Tenant of all where he is not the Writ shall abate.

An affize is brought of Tenements in D. and S. the Tenant says, that all is in S. that being so, the Writ shall abate; for he cannot abridge the whole Town; but see now by the Statute of 23. Hen. 8. chap. 3. where he may abridge.

The Bailiffs may plead *Non tenure*, or misnaming of the plaintiff, but not of his Master, and conclude it, &c.

The Bailiffs may plead that the Tenements are in another Town, for that is an abatement.

The Bailiff may plead misnaming and Joynt-tenancy without Deed.

A Bailiff may plead not attached by fifteen days.

After adjournment upon the plea of the bailiff, the Tenant may plead matter which come of later time.

The

The Tenant himself after the assize awarded, may leave his bar, and plead the general Issue; but he cannot plead a new bar after Issue.

If a plea be pleaded, and the Justice dies, all shall be pleaded a new; but if they be at Issue, that shall stand.

Where they are adjourned upon a plea in abatement, and after the Writ is awarded good, he may afterwards plead in bar.

Thus much may suffice to have spoken of assize,

We should now come to treat of divers other actions, as *Contributions facienda*, *Quid juris clamat*, *Per quæ servitia*, *Et per quem reddit*; and divers others of those natures, and finding them to be very obsolete, and out of use, and that the Law hath provided remedies by the foregoing actions in most of those cases, and that the proceedings thereupon (chiefly for the trying of Titles) are far more expeditious, and more certain; and with lesse trouble and danger of the client; I think it will not be time ill spent to insert some brief Rules, both in *Ejectione firme*, and some other actions before spoken of, which were then omitted; and hope though they come not in the direct places of those titles, will be very usefull for the attorney.

These proceedings are referred to the Title foregoing, of this Subject, Fol. 199.

OF the procelle in this Action we have before spoken, and of the pleadings and proceedings upon it, but because many of them miscarry by reason that the proceedings before process, relating to the Lessors Entry, the making of the Lease, the entry of the Lessee by vertue of the Lease, the Eje-

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tors entry upon him, and his Ouster and Ejectment, where care is not taken, and they be not circumspect to prevent a defect in any of these, it causes much danger and prejudice to the Client, and cause, and no little disgrace to the Attorney. In this Action so very useful, we shall speake of these things in order.

1. The Entry of the Lessor that hath the right.
2. The Lease made by him for triall of the Title.
3. The Entry of the Lessee, by vertue of the Lease so made.
4. The Entry upon him and his Ouster and Ejectment.

First it is to be considered what right or title the Lessor hath to enter, whether he hath any right or title to the Land or no; for if the right and title appear on the Defendants part, the Plaintiffs action will fail.

Now a man may have a Right or Title to that Land whereof he hath no possession nor property; as where Land is taken from a man wrongfully by disseizin, in this Case the Challenge and Claime of him from whom it is taken, is called a Right. There is a Right of Action, which is, where there is no remedy left, but an Action to recover the Land; and there is a Right of Entry, when the party claiming, may for his relief, either enter into the Land, or have an Action to recover it.

There is a Title of Entry, which is where no wrong is done; and yet one who hath a lawful course to enter upon the Land which another hath, but hath no Action to recover it; as where Entry is given to a man for a Condition broken upon an Eschear, the tenant dying without heir.

In all which cases he must make his Entry before he can bring his action.

1. The Property and Title of Land is made, and may be gained severall wayes.

Either by Entry, as in case of occupation, where Land is granted to I. S. for another mans life, and I. S. dye; in this case he that first gets into possession shall have the Estate.

2. By descent, where one hath Land of Inheritance, and dieth, not disposing of it.

3. By Escheat, where the owner dyeth seized without any Heire, which may be in case he have only a Bastard, or because he is attained of Treason or Felony.

4. By conveyance, and so the Property of Land is transferred, & so it is passed ten manner of wayes, as follow.

Fine, Recovery, Feoffment, Grant, Lease, Bargain and Sale, Exchange, Surrender, Release, Confirmation.

A man may have property in Land also by an Execution, as by Elegit or Extent.

If he ever had a right of Entry into the Land, it must be considered whether it doth continue and be not taken away, for one may have a right of Action, and no right of Entry to recover his Land; and he that will maintain this Action, must make himselfe a Title under the Lessor, that had a right of Entry into the Land when he made the Lease; for he that makes the Lease, must have power and right of Entry, at the time of the Lease made, otherwise neither the Entry nor the Lease will be good.

Now that the Entry may be good and warrantable by the Lessor, for otherwise the Action is not maintainable, take these Rules following.

1. This Entry is to be made by the party that hath right.

3. It is a purposed going into, or setting his foot upon the Land as upon his own Land.

3. This may be done by the Party himselfe that hath right to enter, or by his Attorney, by warrant from him, or by another to his use; and if it be done by Attorney, he must have a good Authority, and see he do duly pursue it.

Note that one Joynt-Tenant, Tenant in Common, or Coparcener, having right to enter, may if he will, enter for all the rest.

If such a person enter generally, or for, or in the name of himselfe and the rest; and the rest do not afterwards disagree to it, this is a good entry for himselfe and the rest; and therefore if one have Issue, a Son and a Daughter by one Venter, and a Son by another, and being seized of Copy-hold Land, devise all to the younger Son and die, and he enter into all this Entry, shall availe the eldest Son, to put him in Possession of the third part.

The entry into one part may be sufficient to gain the Possession of the rest of the Land.

The Entry into parts must be in the name of all, &c.

If one restrain his own entry, and make it special, and say that it shall be to such an Acre only whereon he puts his foot; in this case it reduceth the Possession of no more but that part, &c.

If a Lease be made to A. and delivered to B. to the use of A. & B. enter to the use of A. and after is outed, may have this action upon the Entry.

Having done with Entry, we come now to speak of Leases; for it is absolutely requisite for the maintaining of this action, that a good and warrantable lease be shewed forth.

For the better inabling of you to make such Lease, are these rules following.

1. The Lease to try the Title must be well made, sealed, and delivered, as other Leases and Deeds are done; and for that see the Book of common assurances, Chapter the fourth and fourteenth: A Book very usefull for many conveyances, both in this and other kindes.

2. The Lease and entry may be made by the Party Lessor himselfe, if he be of full age, & not a feme covert or by his Attorney, by a Letter of Attorney, wherein the Lessor may seal and sign the Lease, and seal and deliver the Letter of Attorney at one and the same time, to some Friend of his; and in this Letter of attorney he must recite the Lease, and give the attorney power to enter into the Land, and there to deliver the Lease of the Lessee as his Deed, and then the attorney must do it in such sort, as the Lessor for himselfe ought to do it; and he must not deliver it till he come to the Land.

3. The Lease must be delivered upon the Land, for if the Lessor seal and deliver the Lease, before he hath made his entry upon the Land, it is void.

The Husband and Wife may take a Lease and Letter of Attorney, to enter and deliver it upon the Land, and this is good.

A Woman covert, or an Infant, cannot make a Letter of Attorney to seal a Lease, to try a Title as a man of full age may do.

The Husband alone may make a Lease who is Wives Lands.

A Copy holder may make a Lease to try the title for a yeare without License.

A Tenant in common may make a Lease to try the Title for his part, &c. for a yeare &c.

The usuall Tract that is used in sealing this Lease of Ejectment, is as followes.

VV here a man hath a Title to a House, Land, &c.

both, and desires to gain the Possession ; it is usefull to make a Lease (to some friend who is assured will not deceive his trust, but will surrender up the Lease, &c) for two or three years or more, for so long as he may be sure the time is not expired, before he get his triall and Judgement.

This Lease being made , he goes with such his Friend the Lessee , to the Mannor or chief House, or stands within the door , or to the Land where no house is , where he seals and delivers it to his Friend and taking the Ring or any Part of the door in his hand, delivers the Lease, mentioning the House and Lands with the Appurtenances, which are contained in the Lease, to his said Friend the Lessee.;

This being done , and that you go away , whosoever after that staies in the House , or whosoever next enters into the House, whether Master ; Servant , or Stranger, is an Ejector, and is proper to be made Defendant.

In case you find no Ejector, you may, if you so think fit, appoint one to that purpose.

The Lease being sealed and delivered to your Friend as before, the Partry appointed to be the Ejector may go into the House, and thereby , you going away, he is become Ejector.

VWhere you thus appoint an Ejector you must be sure to give notice to the Tenant of the Land, to defend the Title upon the Ejectors appearance.

VWhere the Tenant of the Land hath but a Lease, he must give notice to the Lord in whom the Fee-Simple is, that he may be ready with his Evidences, &c. to defend the Title.

Note that if you cannot come into the House, you may deliver the Lease upon the Lands, in the name of the House and Lands contained in the Lease; and he that comes next after your going away upon the Land, is an Ejector. _____ P 3 VWhere

VWhere it cannot be proved that the Lessee after the Lease made, did enter and was possessed, this action will not be maintainable, and therefore we must now say something of the entry of the Lessee.

1. He must make such an Entry as to gain the Possession, for he cannot be ejected out of the Possession of that wherein by Law he was never in.

2. His Possession must continue, for if upon sealing of the Lease, and the delivery of it to the Lessee upon the Premises, the Lessor leave him upon the House or Land, and that he be outed, or come away, &c. and another enter; whether it be a continuance of the same Tenant in Possession, or the entry of a Stranger; here his Possession is discontinued, and any of those parties are Electors, For the ejectors take this.

The entry of a man upon the Land after the Lease sealed, or the putting in the beast upon the Land, in the like case is an Ejectment.

The continuance of the same Tenant in Possession, that was in at the time of the sealing of the Lease, is an Ejectment, and the Tenant an Ejector.

VWhere a Lease is made to try the Title, and the Servants of the former Possessor enter with their Masters Carts to do their utmost, and the Action is brought against the Master; it is maintainable without proof of the Masters Commandment for this Entry.

In some cases this VVrit lies, and not in others.

It lies of a Mannor House, Land, Meadow, Pasture, Tith, or such like things.

It lies of an Orchard: It lieth of a Kitchen: It lieth of a Chamber: It lieth also of a Coale Mine: It lieth also of a Bailery.

It lieth not upon a Lease of a Stock of Cartell,

nor upon a Lease of a Sum of Money, nor of a water, course.

The Writ must set forth the certainty of the things both for quality and quantity, as so many Messages, so many Cottages, so many Acres of Land, so many Acres of Meadow, so many Acres of Pasture, &c.

Thus much for *Ejectione firme*, before omitted.

In Actions of Account take these observations following.

NOW where a Bailiff doth make a Deputy, yet the Writ must be against the Bailiff himself.

It a stranger take the profit of my Wives Land during Marriage, and I dye, my Executor, and not my Wife, shall have this Action.

This Action lies against the husband for the receipt of his wife, and against the Wife and Husband for the receipt of his Wife, whilst she was sole.

It lies against a body politique, as against a single man.

It lies against the Keeper of a Park, that hath the charge of Deer, as Bailiff of his Park, &c.

An Action of Account lies not in these cases following:

1. Where the party to be sued claimeth the thing to his own use.

2. Where there is no privity between the parties, neither *Ex provisione Legis*, called privity in Law, as in the case of a Guardian, nor in Deed by the consent of the party, as when Goods are delivered to a stranger, and not to my use, or to be delivered over to more, there is no agreement between the parties.

3. When he that hath delivered the things, hath taken an Obligation for security of the things delivered.

4. Where the party that hath the things, hath bare oversight of them, as a Bailiff of a Plow, a Shepherd of sheep, &c.

A Bailiff shall have allowance upon his account but a Receiver shall have none.

If the Bailiff disburse any thing for his Master belonging to his Office, as to pay his quit-Rent, or the like; or if he be robbed, or suffer losse by other means without any default in him, it shall be allowed him upon his Accounts: But if he pay his Masters Debt, or lay out any thing else not appertaining to his Office, this will not be allowed him.

There are two Judgements upon this Writ, the first is *Quod computet*, which is interlocutory; the last is *Quod querens recuperet versus Defendentem*, so much as he is found in Arrearages, and *Damna occasione interplacitationis*.

The first is to account only, and upon this the Defendant may be outlawed, and then before Outlawed if he appear, and enter into account, and be found in Arrearages, the Plaintiff shall have a definitive Judgment for the Arrearages; and after the first Judgment no abatement can be for any cause, but a discontinuance or Non-suit may be.

The first Judgment is but an Award of the Court like to a Writ of Inquirie of Damages, and not like to a small Judgment, for there the Action is clearly determined; and these two Judgements depend one upon another; for if Judgment be to account, & the Plaintiff dye before he hath accounted, the Executor cannot go on in that Suit, but he must begin again; and no Writ of Error will be upon the first till after the second Judgment.

We have now gone through the most general and useful practice of the Common-Bench, relating to the several Actions before going; as also of all Offices

ees and Officers incident to that Court; and now a^s before we promised, hereto is added a Table of the Fees of that Court, of all Offices whatsoever relating to the Court, or the practice of it, belonging to every Office and Officer, which follow in order.

The fees here under mentioned are the fees due, and paid to the Lord chief Justice, & the other Justices of the Court of Common-Pleas at Westminster, as they were due, and usually paid to the Justice of the same Court.

The Lord Chief Justice his Fees. *Writ of Error*

For allowance of a Writ of Error upon an Outlawry before Judgement, 20 s.

For a Bail taken upon the Outlawry upon mean process in debt, if the debt be 20 l. or above, 2 s. 4d.

For the allowance of a Writ of Error upon a Judgement, 20 s.

For Bail taken in case of debt, after Judgement, 12 s.

For the allowance of a Writ of Error upon a Judgment upon a *Scire fac.* and Outlawry after Judgement, 3 s.

For making the Roll that a Writ of Error is allowed on, *Making the Roll.* a s.

For a *Supersed.* 8 s.

For the transcript of a Record, being a *Transcript.* 6 s. 8 d.

For ing a presse, For

Certiorari.	For every presse more,	6s. 8d.
	For the return of every certiorari,	14s. 9d.
Seal Nisi prius.	For the Seal of every record of Nisi prius,	2s. 1d.
	For the Seal of every writ sealed in Court,	1d.
Sealing of writ. & Exemplifi.	For the scale of every Exemplification.	
<i>The Fees following are due to such of the Judges who do performe the businesse.</i>		
	F Or acknowledgement of a Fine or Warrant of Attorney for a common Recovery out of Court,	6s. 8d.
Sign Writ.	For signing every writ of privilege to remove any cause, Habeas corpus procedendo, or Superfed. upon a procedendo,	4s.
Bailes.	For every Bail taken out of Court upon any such Writ of privilege, wherein one cause onely is returned,	9s. 8d.
Confession.	For every cause more,	2s.
	For the confession of a Judgement out of court,	9s. 8d.
Bailes.	For every Phillizers Bail, and other Bail taken out of court,	9s. 8d.
Satisfaction.	For acknowledging satisfaction out of court	9s. 8d.
Deeds acknow.	For acknowledging out of court a Deed to be inrolled,	9s. 8d.
Guardian. Suggestion.	For admission of a Guardian out of Court.	9s. 8d.
	For the proof of a Suggestion out of Court	

Court, for every witnesse,	9s. 8d.	
For a warrant for passing of a fine,		<i>Warrant for Fine.</i>
where there are more then three cognizors, or three Cognizees, parties to the Fine.	4s.	
For every Affidavit taken out of Court upon a forraign Plea, or Refcous.	2s.	<i>Affidavit.</i>
For any other Affidavit taken out of Court.	8d.	
For exhibiting of an Information out of Court.	8d.	<i>Information.</i>
For signing a Bill of costs to award an attachment for not appearing upon a Subpœna	8d.	
For granting a license to compound upon a penall law,	2s.	
For assessing of the Kings part of a forfeiture upon a penall Statute after composition with the Informer,	2s.	
For the commitment out of Court of a prisoner to the Fleet, charged with one caule only.	9s. 8d.	<i>Commitments.</i>
For every Baile taken out of court upon an Outlary in debt upon meane process reversed, if the same be twenty pounds,	2s. 4d.	<i>Bailes on Outlawries.</i>

Divident

Divident Fees.

These Fees following are due to the Lord chief Justice, & the Judges of the court of common Pleas, by way of Divident.

Fees in court to the Box	For confessing of a Judgement in Court. 6d.
Judgements. Satisfaction.	For acknowledging satisfaction in Court, if the Debt or Damage do not amount unto 100l. 6d.
	If the Debt or damage do amount to 100l. 12d. and for every 100l. after the same rate, 12d.
Guardian.	For admitting an Infant in court to his Guardian. 12d.
v't.	For reversing an Outlary in Court for Error in the Exigent, or Return, 12d.
	For the like for the insufficiency of the Proclamation or Return, or for want of a Proclamation. 2s.
Recoveries.	For every common Recovery acknowledged in Court. 6d.
Fines.	For a Fine acknowledged in Court, 6d.
Bailes.	For a Bail taken in Court, or a Bail or Recognizance acknowledged in court, 12d.
Recognizance.	For a Deed acknowledged in court to be inrolled, 12d.
Deeds.	For a discontinuance. 12d.
Discontinuances.	For a prohibition granted, 9s. 8d.
Prohibition.	Fees

For every wager of Law, or nonsuit *Wagers of law*
upon a wager of Law. 6d.

For admission of an Attorney to be *Returns worn.*
an Attorney of this court, 20 s.

The Puisse Judges Fees.

For every Fine drawn at Bar, 12d *Fines.*

For a Recovery drawn at the Bar *Recoveries.*

with a single Voucher, 18 d.

For every Voucher more, 6d.

For Reversall of an outlary in court *Reversalls.*

4s.

For taking a privy verdict. 6s. 8d. *Privy verdict.*

Fortaking of costs upon every ver- *Costs taxed.*

dict. 12d.

From the Clark of the Warrants e- *Feod annale.*

very Terme, to every of the, puisne *Clericus warr.*

Judges. 33 s.

For every Attorney whose name is *Rot Atton.*

recorded in the roll of Attornies eve-

ry Terme, 4d.

For inrolling and examining the *Inrolling fines*

parts of a Fine, and writs upon com- *& recoveries.*

mon Recoveries by the Statute, 23. E-

liz. 6s.

For the exemplification & exami- *Exemplificati-*

nation of the parts of a Fine, & writs *on thereof.*

upon common Recoveries by that

Statute. 5s.

For drawing and entring a rule for, *Rules for a-*

and amendment upon that Stat. 12d. *mendments.*

For a search made upon the inrol- *Searches.*

ment upon that Statute. 4d.

For a copy of a Fine, or Writs in- *copies.*

rolled

The Compleat Attorney

*Return of writs
of covenant &
entries.*

rolled upon common recoveries inrol-
led by that Sat. for every sheet. 4d.

For the return of every writ of Co-
venant brought to levy a fine upon. 12d.

For the return of every writ of En-
try to suffer a common recovery, eve-
ry writ of Summons & Seizen there-
upon, 10d.

*Signing Dedi-
mus potestatem*

An ancient fee of 6s. 8d. for signing
of a Dedimus Potestatem, due to the
Judges of any court who do assign
the same which is now, & of late hath
been divided amongst all the Judges
that ride the circuits.

*These fees following are due to the
clarks of the Lord Chief Justices, & o-
ther the Justices of the said Court.*

Fines.

TO the Judges Clerk of the fines,
For taking of a Fine, or warrant
of Attorney. 3s. 4d.

*Warrants of
Attornies.
Bailes.*

For certifying of a Fine, or returne
of a Dedimus potestatem, 16d.

To the Judges Clark of Bailes, for
taking every baile. 12d.

Caveat.

For entring every caveat to give no-
tice that good baile may be taken, 2d.

Satisfaction.

For satisfaction acknowledged out
of Court, 12d.

*Deeds acknow-
ledged.*

For a Deed acknowledged out of
Court to be inrolled. 12d.

Suggestion.

For the proof of a suggestion out of
Court for every witness, 12d.

Affidavits.

For an Affidavit taken out of Court
4d.

For entering into his book an Information exhibited out of Court, 4 d.

For entering into his Book of Costs Warrant signed to award an attachment for not appearing upon a Subpoena, 4 d.

For admission to a Guardian, 12 d.

For entering into his Book a License to compound upon a penal Law, 4 d.

For entering into his book the Kings part of the forfeiture upon a penall Law assessed by the Judges, after composition with the Informer, 6 d.

For entering into a Book a commitment out of Court of a prisoner to the Fleet, charged with one cause only, 12 d.

To the puisne Judges Clerk of the Inrolments, for copying, inrolling, & examining the parts of a Fine and Writs upon a Recovery, by the statute 23 Eliz. 8 s. 4 d.

For a search made for an Inrolment upon that Stat. 8 d.

For writing a fine, or writs inrolled upon a common Recovery inrolled by that Stat. 8 d.

Information.

*Guardian
Licences.*

Commitments.

*Inrolments.
Fines and Recoveries, &c.*

The Compleat Attorney.

The *Custos brevium*; who is the prime and first Officer of the Court, his Fees.

These Fees following are the Fees which are taken by the Custos Brevium, of his Majesties Courts of Common-Pleas, & his Clerks in right of his said Office, and as they were taken in El. by the then Master of the said office, and his Clerks.

Pt. diem.

Imprimis, for filling any Writ, or other Record. coming after the day of the return thereof, except Writs of privilege, *de veniendo, & reduendo*, & also Writs of privilege, called *prop. or post diem.* 4d.

Pt. Term:

Item, for filling any Writ, or other Record (except before excepted) coming after the Term, wherein it was returnable, called a *Post Term.* 20 d.

Item, For filing any Writ, or other Record coming after two Terms, called *post Termin*, for every Term after 20 d. a piece, except Exigents and Outlawries, which pay but only 20 d.

Item, To the Clark of the same Office (*ab antiquo*) who enters the same, 2 d.

Item, Upon the making of the Stat. 3 H. 7. cap. 24. the *Custos brevium* was allowed

allowed by the court for carrying and
re-carrying of every Fine, levied ac-
cording to that Statute, to Westm. to the
Cyrographer to proclaim four Terms,
8 d.

Item, for keeping three parts of the
Record of every fine, consisting of five
parts, 4 d. a piece, 12 d.

In tot. For every fine 3 s. 8 d. where-
of the Master hath 2 s. 6 d. and 14 d.
is allowed to the Clerks, 3 s. 8 d.

Item, For the amendment of every
Writ or other Record *Per warrant. cur.* Amendments.
20 d.

Item, for every *Non est factum* plea- *Non est factum*
ded in court, 2 s.

Item, For every Sheriff's bundle of *Sheriff's bundle*
writs returnable of the precedent
Term, and coming before Eshoynday
of the second return of the new Term,
8 d.

*The usual Fees allowed by the Cu-
stos Brevium to the Clerks of
his Office.*

In primis, For every Temple search *Searches*.
4 d.

Item, Out of every Westm. search,
2 s. 1 d.

Item, To the clerks out of the al-
lowance of every *Certiorari*, 2 s. 8 d. *Certiorari*
and for certifying the same, *secundum*
longitudinem, and according to Reason,
2 s. 8 d.

Item, To the clerk for writing and
examining of every Exemplification; *Exemplifica.*
2 *secun-*

The Compleat Attorney.

The *Custos brevium*; who is the prime and first Officer of the Court, his Fees.

These Fees following are the Fees which are taken by the Custos Brevium, of his Majesties Court of Common-Pleas, & his Clerks in right of his said Office, and as they were taken in El. by the then Master of the said office, and his Clerks.

Pt. diem.

Imprimis, for filling any Writ, or other Record coming after the day of the return thereof, except Writs of privilege, *de veniendo, & reduendo*, & also Writs of privilege, called *prop. or post diem*. 4d.

Pt. Term:

Item, for filling any Writ, or other Record (except before excepted) coming after the Term wherein it was returnable, called a *Post Term*. 20 d.

Item, For filing any Writ, or other Record coming after two Terms, called *post Termin*, for every Term after 20 d. a piece, except Exigents and Outlawries, which pay but only 20 d.

Item, To the Clark of the same Office (*ab antiquo*) who enters the same, 2 d.

Item, Upon the making of the Stat. 3 H. 7. cap. 24. the *Custos brevium* was allowed

allowed by the court for carrying and re-carrying of every Fine, levied according to that Statute, to Westm. to the Cyrographer to proclaim four Terms, 8 d.

Item, for keeping three parts of the Record of every fine, consisting of five parts, 4 d. a piece, 12 d.

In tot. For every fine 3 s. 8 d. whereof the Master hath 2 s. 6 d. and 14 d. is allowed to the Clerks, 3 s. 8 d.

Item, For the amendment of every Writ or other Record *Per warrant. cur.* Amendments. 20 d.

Item, for every *Non est factum* plea: *Non est factum:* ded in court, 2 s.

Item, For every Sheriff's bundle of Sheriff bundle. writs returnable of the precedent Term, and coming before Effoynd day of the second return of the new Term, 8 d.

The usual Fees allowed by the Custos Brevium to the Clerks of his Office.

Item, For every Temple search Searches. 4 d.

Item, Out of every Westm. search, 2 s. 1 d.

Item, To the clerks out of the allowance of every *Certiorari*, 2 s. 8 d. *Certiorari* and for certifying the same, *secundum longuudinem*, and according to Reason, 2 s. 8 d.

Item, To the clerk for writing and examining of every Exemplification; *Exemplifica.* 2 *secun.*

Porta. bre. in secundum longitudinem.
cur.

Item, To the Clerk for any Write or other Record carried into the Court,

4 d.

Bre. de Inguam.
& scia.
Fines.

Item, For entering a common Recovery writ *super descensionem in le post*, 8 d.

Item, For every fine passing in the Office,

14 d.

Nec recipiatur.

Item, for entering into a Book every [Recipiatur.] coming under a Judges hand, or by order of Court,

12 d.

Nota Iur.

Item, For every note of *Innoys* names for the Clerk of the Iuries to make further process by,

4 d.

Copia ex fa.

Item, For every note of an Exigent for the Clerk of Outlawries to make further Process by,

8 d.

Searches.

Item, For the search of any book of Entries of any Writs, for every Term,

8 d.

Copies.

Item, For the Copy of any Writ, or other Record, for every sheet,

8 d.

The usuall Fees allowed by the Custos Brevium, to the Bag-bearer of the Office, being always the Common Voucher of the Court.

Searches.

In primis, For every search under five years,

1 d.

Item, For every Temple search,

5 d.

For every Westm. search,

12 d.

Porta. bre. in cur.

For any writ or other Record carried into the Court,

5 d.

Recupal.

For every common Recovery suffered in Court (being the common Vou-

chee)

thee) 4 d. a piece.

4 d.

For every Attorney sworn in Court, *Attorn. Luc.*

6 d.

The Fees of the Clerk of the Inrolments of Warrants, & Executions, in the common Pleas, as are now, & have been taken this 32 years & as I conceive were taken ever since 31 Eliz. saving the Fees hereafter mentioned, allowed per ordin. Cur.

Every Inrolment containing a fide *Inrolments.*

Of a Roll, 5 s.

For a full Roll, 10 s.

And so according to the rate.

Every warrant of Attorney in debt. *Warr. Attorn.*

under & detainee, 4 d.

The Sheriffs Warrants, 12 d.

Every other Warrant, called double

Warrants, 8 d.

For a Post Termin. 4 d.

The Lord Major of London his war-

rant, 5 s. 8 d.

The Secondaries of the Compters in

every Term yearly, 13 s. 4 d.

For entering of an Attornies name in *Attorn. Luc.*

Roll of Attornies, upon his first ad-

mittance, 3 s. 4 d.

For a warrant upon a Writ of Cove. *Warr. Sur. fac.*

ant, per ordin. Cur. 4 d.

Paid to the Clark by every Attor. *Rot. Attorn.*

4 d. a Term, called the Roll-

year, which is paid to the Judges Box,

and I conceive it to be due ever since

The compleat Attorney.

11 Eliz.

Recuperat.

Paid also by the Clerk to the Prothonotaries, 12 d. upon every recovery which is also paid to the Judges, 12 d.

Attor. luv.

To the Clerk when an Attorney is first sworn, 12 d.

*The Cyrographers Fees.**Fines.*

In *primis*, the ancient Fee limited by Stat. 11 Eliz. so every Fine, 4 s.

Item, From 4 H. 7. for the Service in proclaiming fines, 8 d.

Item, By Stat. 23 Eliz. for writing the Roll, 4 d.

So the Cyrographers Fee for every fine is, 5 s.

Other Fees also due, and anciently paid to the Cyrographer, videlicet.

Exemplificat.

For exemplifying a fine the Term in which it was ingrossed, 2 s. 8 d.

Copy.

For every sheet of every fine, of twelve lines copied out of the Record, 12 d.

For the sight of every record being ancient, from H. 8. upwards, 3 s. 4 d.

Searches.

For the search of every fine from H. 8. to this present, for every year, 8 d.

For the search of every fine during the

The Reign of H. 8. for every year, 12 d.

For certifying of every Record by a writ of Error, 12 s. *Certiora.*

For a *Quid juris clamat, quem redditum addit, & per que servit.* 6 s. *Quid Jur. clam.*

For entering a claim upon a Record, 5 s. *Claymes.*

For allowing of Proclamations upon Fines brought into the Office after the Term ended, 6 d. *P. fines.*

For the Post Termin of a fine, 12 d. *Pt. Terminus.*

The Cirographers Clarks Fees for ingrossing of Fines by the Attorney which sue them out.

The Cirographers Clarks have received an allowance of the Attornies for their pains for them, which heretofore have been more advantageous unto them then now it is, being reduced to 2 s. 6 d. in certain, had and made at the request of 100. or 80. of the most ancient Attornies, with *Fines ingros.*

John Brewer Esquire, Clark of the said Office, in two or three of King James: to which agreement had and made in writing, the said attornies set to their hands, and the same was delivered to Sir Edward Cook Knight, then chief Justice of the Common Pleas, & hath continued ever since, 2 s. 6 d.

For this allowance the clarks doe write more then al the officers through which Fines do pass, viz. They write every fine long or short four times o.

The Compleat Attorney

ver in a great set hand.

Fees belonging to the Clerk of the Treasury.

Copy.

FOR the Copy of every Issue, and
 imparlance for every sheet, 4 d.
 For every Judgement, Deed enrol-
 led, and real Action, for every sheet, 8 d.

Searches.

For the search of every Term above
 ten years, 4 s.

Exemplification

For every exemplification not ex-
 ceeding three sheets, 7 s.

*Records of Nisi
 prius.*

For every sheet more, 12 d.

For every Record of *Nisi prius*, not
 exceeding three sheets, 2 s.

For every sheet more, 4 d.

*Fees for the Keepers of the Treas-
 ury from 12. Eliz.*

Searches.

IN *primis*, for search of a term above
 ten year, 8 d.

For seven years under ten years, 4 d.

For three years, 6 d.

Porram Rot.

For search of a Plea Roll, 4 d.

Ligam Rot.

For a Roll carried into the Court, 6 d.

For making up a term and record, 3 s.

Attorn. Jur.

For every Attorney sworn in court, 12 d.

Jur. at Bar.

For a Jury at bar, 5 s.

Nisi prius Mid.

For a *Nisi prius* in Mid., 2 s.

Wager delay.

For a Wager in Law, 5 s.

For

For a copy of a *Precipe* after the *Copier fines*.
 Term, 18 d.
 For a *Fine* acknowledged in the
 Treasury, 4 d.
 For a warrant of Attorney left unen-
 tred, and comes to be entred in the
 Roll after the Term, 4 d.
 For an Entry lett out of the Kings *Intrapl. Termi.*
 silver, and comes to be entred in the
 Office, 4 d.
 From the Clerk of the Treasury for *Feed. annale.*
 my attendance every Term, 5 s.
 For my key after the Term, 18 d. *clinet Theff.*

The Fees of the Clerk of the
 Kings silver, as they were ta-
 ken in the E venth year of
 Queen Elizabeth, in the six-
 teenth year of King James,
 and in the late Kings time, and
 since.

Inprimis, for the Fees of every ordi- *Fines to the*
 nary Fine taken by the Lord Chief *Western cir.*
 Justice of the Common Pleas, or any *uit.*
 Judge of Assise in the Western circuit,
 together with the copy or *Post fine*, 18 d.
 For every fine taken in the same circuit
 by special Commission, and for the co- *Fines by special*
 py of the *Post fine*, 23 d. *Deed.*
 For every ordinary fine elsewhere in *Ordinary fines.*
 England and Monmouthshire, taken
 as aforesaid without Commission, and
 for the copy, 10 d.

Westera.

For every fine taken by special Commission out of the western circuit, and for the copy, 14 d.

Several capti.

For every several caption in any fine where it is taken at several times by special commission over and above the former rates, 4 d.

Certiorari.

For every fine certified by *Certiorari* after the death of any Judge, or other Commissioners, over and above the former rates, 6 d.

Pt. Termi.

For the *Post Termin.* of every fine brought in the next Vacation after the return of the Writ of Covenant, 6 d.

Searches.

For every search of any fine every Term, 4 d.

Copia.

For every copy of the entry of the Kings silver, 8 d.

Non recipiatur.

For every Fee of a *Non recipiatur*, of any fine either by order or warrant of the Court, or any Judge, 3 s. 4 d.

For the continuing of any such order or warrant from Term to Term till it be dissolved, 3 s. 4 d.

*The Philizers Fees.**Cap. al. & plur.*

In primis, for every Cap. Al. & Plur. Cap. in Debt, Detinue, and Trespass, not having more then four Names in a Writ, and entry thereof, 6 d.

Delivery of Record of the Cap. Testat.

Item, for delivery of every first Cap. upon Record and Entry thereof, 4 d.

Pone sum.

For every Testat. upon any of the said Writs, *Pone in Replevin & Summons*, 12 d.

- 12 d.
 Item, For every *Cap. Al. & Plur.* in *Bria in compo.*
 Accompt, Covenant, Annuity, Ejectione
fime, and upon penal Stat. 14 d.
 Item, For every Writ in an Action *Actions super*
 upon the case or more, according to *casum*.
 the length, 12 d.
 For every return *Habend.* and second Return *Habend.*
 deliverance and Entry thereof, 2 s.
 6 d.
 For every *Non omit. & cap.* in *Wi- Non omit.*
thernam, 2 s. *Witthernam*.
 For every writ of partition, *Warrant*, Partition waste,
Chato, *Quare imp.* and Waste, 12 d. *Quare impedit*.
 For every Writ for inquiry of dama- *Warr. Cart.*
ges in real actions, *Scire fac. & Super-*
fed. 2 s.
 For every grand *cap. Al. Sum pet. cap. Inqui. de dam.*
 and entry thereof, 2 s. 6 d. *Scire fac. super*.
 For the copy of the entry thereof, *Gr. & pet. cap.*
 8 d. *Copia inde*.
 For the demand in every writ of view *View*.
 and entry thereof, 2 s. 6 d.
 For every writ of *Seisin* and entry *Seisin*.
 thereof, 4 s. 6 d.
 For the view prayer, 2 s.
 For a copy of the entry thereof, 3 d.
 For every writ of *Habeas corpus, duc. Habeas corp. &*
comam, distring. nuper vicec. & distring. distring.
haldum. 2 s.
 For every writ of *Rescous* and entry *Rescous*.
 thereof, 2 s.
 For the entry of every adjournment, *Adjournment*.
 discontinuance and resort, 4 d. *cont. resort*.
 For every special bail, and the entry *Special Bail*.
 there=

	thereof,	2 s. 10 d.
	For every appearance in real and mixt actions,	4 d.
Appearance.	For every appearance upon writs to arrest, and entry thereof,	12 d.
Searches, Rules, Copies, Numbers Rolls.	For searches, copies, number, rolls, and giving of Rules, each of them,	4 d.

Exigenters Fees.

Fees Exigenters **E**Ver since the Statute of Henry the eighth, which gave the Proclamation upon the exigent, the whole Estate of the Exigenters Office did consist in the making of three Writs; *Videlicet*, An Exigent, a *Superfed.* and a Proclamation. All which writs are warranted by one and the same Record.

For all the time of our remembrance and experience in the said court, which hath been by the most ancient of us) for about thirty years or thereabout, the fees of the said writs were as followeth, *videlicet*.

The *Superfed.* 2 s.

The Exigent, 11 d.

The Proclamation, 6 d.

Which fee of 6 d. was given by the Statute of 6 Henry the eighth, being now about one hundred and ten years since.

About eight or nine years since the *Superfed.* (*quia improvid.*) being the least

least Writ in labor, and more in profit then both the other, was granted by Letters patents under the great Seal of England, by the late King of famous memory, to Master John Murray, then of his Majesties bed-chamber, and partly to avoid contestation with his said Majesties grant, and upon hopes & promises of some recompence other way, the Exigenter did give way to the said parent, and have ever since lost the benefit of the said Superfed. whereupon the Judges did give increase onely of 1 d. to be taken upon the Exigent, for relief of the Exigenter and their Clarks, and so the Exigent was made 12. d. which increase of 1d. is all the recompence which hitherto they have received for that great loss of the Superfed.

We have likewise heard, that above forty years since, and before our times by occasion of an act of Parliament, made 21 Eliz. whereby the proclamation of the Exigent was much enlarged without any addition or increase of Fee there was one penny added to the Exigent to be given to the poore Clarks for writing the said writs, over and above the ancient allowance, which penny hath ever since been paid to the said poore Clarks accordingly, without any benefit to the Masters themselves.

Other increase, addition, or alteration of Fees in our Officers we know not of,

The Compleat Attorney.

of, nor never heard of, although the length of the said Exigent, or Proclamation with theic entries, considering the loss of the supersed. (all which we humbly submit to his Majesties Commissioners) might perhaps have justly deserved some further improvement. And it is certainly true, That no other increase of Fees hath been in our Officers since 11 Eliz. nor for ought we ever heard, or can by any means conjecture for these hundred years at the least.

HILAR. TERTIO.

Caroli Regis.

The Clark of the Jurors.

A note of all such Fees as are now usually taken by the Clarks of the Jurors of His Majesties Court of Common-Pleas at Westmin. being the same, and no other then such as have been taken time out of minde.

<i>Habeas corpus.</i>	I nprimis, For a writ of Habeas corpus.
	I nvector. in debt and trespass. 10 d.
	For the like Writ in all other Actions, 16 d.
<i>Distring.</i>	For a <i>Distingas cum decem Talis</i> , 2 s. 4 d.
<i>Search copy.</i>	For a Terms search, the copy of a Jury

Jury, a number Roll, and a discontinuance and adjournment for every of them, 4 d. *Court adjourn.*

The Clerk of the Effoins.

In *primis*, For every Effoyn and exception, 4 d. *Effoyn except.*
 For the Copy, 4 d.
 For every adjournment, 4 d.
 For the Copy, 2 d. *Copia.*
 For every *Idem dies*, 4 d. *Adjournment.*
 For every Non-suit for want of adjournment in actions personal, 2 s. 4 d. *Copies.*
 For the Copy, 12 d. *Idem dies.*
 For every non suit in Actions real, 4 s. 4 d. *Non pres.*
 For the Copy, 12 d.
 For the exemplification of every Effoyn and non-suit thereupon when it shall happen, being very seldom, 7 s. 6 d. *Exemplifica.*
 For the Copy thereof, 3 s. 4 d.
 For the Clerk 12 d.
 For several fees from several Officers of the Court towards the bringing and marking of the Rolls, 4 l. 9 s. *Feed ann.*

Outlawry.

Outlawry Office.

In the Kings Attorney General
his Office of the Outlawries ex-
ecuted by his Depnty Master
Johnson, the Fees are as fol-
loweth, viz.

Cap. ut l. special.	For a special Cap. ut legat. against Body, Lands and Goods, 2 s. 4 d. For a <i>Procurator</i> , 14 d.
Habeas Corp. duces tecum.	For every Writ of Hab. Corp & duces te- cum, when they are sued forth, 2 s. 4 d. If a <i>propr.</i> , 14 d.
Cap. ut l. general Certifica ut l. in lict.	For a general Cap ut legat. 10 d. If a <i>propr.</i> , 6 d. For ingrossing and certifying a spe- cial Writ, with the Inquisition return- ed by the Sheriff, or Lands, or goods, found thereupon; and for the exigent with the Return thereof at large cer- tified into the Exchequer, when it is required, the Office Fee is eight shil- lings, unless it be commanded by the Lord Treasurer, Chancellor, or Barons of the Exchequer, or by the Kings At- torney General, or Solicitor, for his Majesties service onely, then no Fees is due, 8 s. aut nil.
Certifica. re- versal in feci- num.	For ingrossing and certifying a Re- versal into the Exchequer to discharge seisures upon Outlawries, when any is, 5 s.
Exon. libri de ut l.	And to the Clark, 4 d. For entering the Reversal in the out- lawry

lawry Office to discharge all Proceſſes thereupon, or upon any Writ of Error,

2 s. 8 d.

For certifying of an Outlawry, or Reversal when it is pleaded,

2 s.

Certifica. utl.

And to the Clerk,

4 d.

vel reversal.

For search of an Outlawry one Term (as in all other Offices) 4 d. if above a year, then 3 d. a Term, which is the utmost,

3 d.

Search.

For entering and filing an Exigent, with one Proceſſes thereupon,

4 d.

Filace exsa.

These several Fees aforesaid, were paid & received in Easter Term 34 Eliz. and ever since to mine own knowledge; for so long I have been and continued Clerk, and to all Attornies General that have been since that time.

These (as I understand) are the true Fees.

The Fees of the Seal for Writ.

All Writs of the Kings Bench, and Common Pleas, 7 d. *Seals of Writs Exemplifica.*

The exemplification of the Kings Bench,

2 s. 6 d.

The exemplification of the Common-Pleas,

2 s. 2 d.

Outlawries,

1 d.

Propr.

1 d.

Fees

The Comp'eat Attorney.

Fees due to the Marshal, and Proclamator of the Court of Common Pleas, given by Order made by all the Judges of the Court, Term. Trin. 31 H. 1. post conquestum, & received accordingly by the said Marshall and Proclamator, for any thing appearing to the contrary, until 11 Eliz. and ever since.

Judgements.

*IN*primis, For every Judgement and
and Non-suit, 4 d.

Fines.

Item, For every fine, 8 d.

Item, For every final Judgement, 12 d.

Chief Usher of the Exchequer, and
Marshal and Proclamator of the
said Court of Common-pleas by
Lease from Clement Walker Esq;
who hath the same Office in Inhe-
ritance by grand Serjeanty.

The four Cryers.

Hereafter do ensue the good Ordina-
nces and Rules made, as well
by the Kings Iustices of the Com-
mon-Pleas in times past, as by the
Iustices now being, for the good rule
& order of the said Court, which same
new Iustices do charge and command
every of the said Officers and Attor-
nies well and truly to observe and keep
upon pains therein limited.

Which

Which said orders were inrolled Ter-
min. Trin. 25. H. 1. *post conquestum rot.*
94. Jo. Priest chiefe Justice of the
common pleas, Ni. Auston. Pet. A
er; Ro. davers, Ro. Dawby, Wa. Moile-
nd John Needham Just. of the same
Court.

The Cryers Fees from 11 Eliz.

For every Indgement,	4 d.	<i>Indgments.</i>
For every finall Judgement.	12 d.	
For every Nonsuit,	4 d.	
For every fine,	8 d.	<i>Fines.</i>
For every recovery,	8 d.	<i>Recoveries.</i>
For calling a Jury, if they fill not,	<i>Juries.</i>	
	2 s.	
For every Jury if they fill, and serve,		
and give up their verdict the same day,		
at the Bar the same day, and for keep-		
ing them till then,	16 s.	
If the Jury lie all night, that we be		
forced to watch and wait on them all		
night,	30 s.	
For carrying every bundle of re-	<i>Carrying Rols.</i>	
ords out of the Treasury into the		
Court, and back again into the Treas-		
ury,	6 d.	
For every Attorney that is sworn,	6 s.	<i>Attorn. jurat.</i>
For every Baile,	12 d.	<i>Bails.</i>
For every Oath in Court,	12 d.	<i>Oaths.</i>
For every Wager of Law, old fees,	<i>Wagers of</i>	
	4 s. 4 d.	<i>Law.</i>
For every Scire fac. called in Court,	<i>calling Scire fac.</i>	
	4 d.	

R

For

*The Compleat Attorney.**Nisi prius.*For every [Nisi prius] before my Lord
Chief Justice,

4 s.

Guardians.

For every admittance to a Guardian,

12 d.

*The Fees of the Keeper of the
Court, from 11. Eliz.**Feod. annale.***F**rom the Clarke of the Treasury
for hanging the Cloath of the
Court,

6 s. 8 d.

*Wager of Law*For a Wager of Law, and Wager-
men,

9 s. 6 d.

Juries.

For a Jury at Bar,

5 s.

Attornies.

For every Attorney sworn in Court,

12 d.

Nisi prius.

For a [Nisi prius] in Midd.

2 s.

Bailes.

For a Bail,

4 d.

Fines.

For a fine,

4 d.

*Deeds acknow-
ledged.*

For a Deed acknowledged,

4 d.

For satisfaction acknowledged.

2 s.

*Satisfaction.**The Fees of the Clarke of the In-
rollements of Fines and
Recoveries.**Of fines and
Recoveries in
gross***I**n primis, The fee due to the Judges by
the Stat. of 23. Eliz. for inrolling of
every Fine and Recovery,

6 s. 8 d.

*Exemplification*Item, Due to the Judges by the same
Statute for exemplifying every Inrol-
ment,

5 s.

*Search.*For search of every fine inrolled for
every year,

16 d.

For

For copying every fine inrolled, for Copies.
 every sheet, 12 d.
 For the Clarks fee for inrolling by Inrolments.
 the Roll, 8 s. 8 d.
 For exemplifying after the same Exemption. 8 s. 4 d.
 For every Rule upon amendments, Rules for a. 3 s. 4 d. amendments.
 For returning Writs of Covenants Return of writs
 upon fines, and Writs of Entry, Sum- of entry.
 mons; and Seizins upon common re- Covenants
 coveries, as Deputy of Record for Seizins, &c.
 sheriffs appointed by the Court, the
 ancient fee is, 2 s.

The Porter of the Court his Fees
 from 11 Eliz.

For every Writ of Entry with Mr. Writ of En-
 Attorney Generall, 4 d. try.
 For a Jury at Bar, 5 s.
 For a [Nisi prius,] 2 s. Juris at Bar.
 For a wager of Law, 6 d. Nisi prius,
 For a fine acknowledged, 4 d. Wages of law.
 For a Baile, 4 d. Fines.
 For satisfaction acknowledged, 2 d. Bailes.
 For the Attornies Oath. 12 d. Satisfaction.
 For a Guardian, 4 d. Attornies sworn
 Guardians.

Alienation Office.

Ho. Ravenscroft, Fran. Poulton,
 Geo. Coultrop, Esquires, Commis-
 sioners.

R 2

Tho.

The Compleat Attorney

Tho. Bond Esquire, receiver.

Take no fees, but receive a certain
stipend from the King.

*Fees taken by the Master of the
Chancery, for that Office
appointed.*

Docquets.

FOR signing every Docquet upon
Licence and pardon of Alienation

Pl. Writs.

For every Writ of Entry, for lands
holden in chiefe,

For Writs of entry of lands not holden
in chiefe,

Affidavits.

For affidavits upon discharge of
Tenures,

*The usuall Fees taken in the Office
of Compositions for Alienations,
by the Clerks there.*

Certificate.

FOR a Certificate upon a Writ of Entry.

Pardon.

For the Warrant to the great Seal
for pardon of alienation,

*Discharges of
Process.*

For viewing the Subjects evidences
search of the Tenures, and drawing of
the affidavit with Process, to be discharged,

Release.

For a release in nature of a Pardon
of alienation upon a common recovery,
and for the like release upon a special
Livery, and also for a release upon a general

For a general pardon at the Coronation, or
other times for each of them, 1 l. 3 s. 4 d.

For the note of a Sheriffs discharge upon a seizure 3 s. 4 d. *Discharge of Seizure.*

For every Exo. and for certifying thereof into the Exchequer, 12 d.

For the Sheriffs acquittance, 6 s. 8 d. *Acquittance.*

FOR entering in a large Book every Writ of Covenant fineable, videlicet, in the Term time, 6 d. *Entry of Writs*

And in the Vacation, 12 d.

For entering in another Book remaining in the said office every Docquet upon a licence of alienation in the Term time, 12 d. *License of alienation.*

And in the Vacation, 2 s.

For every Docquet for a pardon of Alienation in Procees of *Distringas*, or *Scire fac.* 2 s. *Pardon.*

For every Writ of Entry of lands holden in capite, and entred in the same book, 16 d. *Entry of Lands holden.*

And in the Vacation, 12 d.

FOR indorsing every Writ of Entry, 6 d. *Indorsing bre. intr. bre.*

For indorsing every Writ of Covenant in Term, 4 d.

In the Vacation, 6 d.

For entering unfiled Writs, 6 d.

For drawing the discharges of Tenures in Parliament, and entering them, 3 s. *Discharges of Tenures.*

*The under-Sheriffe of Meddle
taketh these Fees following
his Majesties Court of Com-
mon-Pleas.*

Warrant.

FOr a Warrant upon a Cap. for ever
name,

Return Ven. fac.

For a return of a *Venire fac.*

For a Warrant upon a Cap. *ut leg*

Return Hab. Corp.

For a return of a Hab. Corpora J
ratorum,

Sum. Iur.

For summoning the Jury, for ever
name,

Cepi Corpus.

For a *Cepi Corpus*, for every name

Return. Exfa.

For return of an Exigent for ever
name,

Return procla.

For return of a Proclamation, 12

Scire fac.

For return of a *Scire fac.*

For return of a *Nihil habet on*
Scire fac.

The Warden of the Fleet his Fees.

A note of the Fees due and belonging to the Warden of the Fleet, and under-Officers, as appeared by a Commission under the great seal of England from the late Queen Elizabeth in the third year of her Reigne, and confirmed in the 37. year of her Reigne, what every several Prisoner in their severall degrees ought to pay.

AN Archbishop, a Duke, a Dutcheffe, are to pay for their Commitments. Commitments.
commitment fee to the said Warden, and his Officers, having the first weeks dyet with wine : 2 l. 10 s.

Also they are to pay for their ordinary weekly dyet with wine, 3 l. 6 s. 8 d.

A Marquis, a Marquesse, an Earl, a Countesse, a Vice-Countess, are to pay for their commitment-fee to the said Warden and his Officers, having the first weeks dyet, 14 l. 11 s. Commitments.

Also they are to pay for their ordinary weekly diet with wine, 2 l.

A Lord Spirituall, or Temporall, a Lady, the wife of a Baron, or Lord,

R 4 are

The Compleat Attorney.

are to pay for the commitment-fee as
abovesaid, having the first weeks dyet
with wine, 11 l. 4 s. 10 d.

Also they are to pay for their ordi-
nary weekly Commons with wine,
1 l. 6 s. 8 d.

A Knight, a Lady, the wife of a
Knight, a Doctor of Divinity, a Doctor
of Law, or others of like calling, are
to pay as aforesaid for their commit-
ment-fee, having the first weeks dyet
with wine, 5 l.

Also they are to pay for their ordi-
nary weekly Commons with wine,
18 s. 6 d.

Commitments.

An Esquire, a Gentleman, a Gentle-
woman that shall sit at the Parlour-
commons, or any person under that de-
gree, that shall be at the same com-
mons, are to pay for their commit-
ment-fee as aforesaid, having the first
weeks dyet with wine, 31. 6 s. 8 d.

Also they are to pay for their ordi-
nary weekly Commons with wine,
10 s.

A Yeoman or any other that shall
be at the Hall-Commons, man or wo-
man, are to pay for their commit-
ment fee, having the first weeks dyet,
33 s. 4 d.

Also they are to pay for their ordi-
nary weekly commons, 5 s.

A poor man in the ward, that hath
part of the Box, is to pay for his com-
mitment-fee, having no dyet, 7 s. 4 d.

Also there is due to the said War- License to goe
den 20d. per diem for the whole abroad.
day, and 10 d. for every man,
that he may lawfully license to
go abroad.

Moreover the said Warden hath *Return of*
for return of Writs, as Sheriffs, *Writs.*
and Bayliffes of Liberties,
have, by which he hath allowance
for return of every *Hab. Corp.* or At-
tachment, 2 s. 4 d.

Also for every *Habeas corpus cum*
causa, there are fees for returning the
causes, *videlicet*,

For allowing the Writ, 2 s. 4 d.

For returning the first cause, 2 s.

For every Execution, 2 d.

For every action, 12 d. *Bringing a pri-*

Which are due to the Wardens *soner to the Bar.*
Clerks, and 5 s. to the Wardens ser-
vants, for bringing every prisoner safe
to the Bar.

Also he hath for allowance of every
Superfed. and discharge, 2 s. 4 d.

Also when any man is committed by
order out of the Courts of Star-cham-
ber, Chancery, Court of Wards, and
Liveries, Court of Exchequer, Court
of Requests, and Court of Dutchie,
the Wardens Servants (being sent to
apprehend them, and bring them to
the Fleet, according to the Tenour
of

Allowance of
Superfed.

Travelling

charges for ap-
prehending par-
ties committed.

The Compleat Attorney.

are to pay for the commitment-fee as
abovesaid, having the first weeks dyet
with wine, 11 l. 4 s. 10 d.

Also they are to pay for their ordi-
nary weekly Commons with wine,
1 l. 6 s. 8 d.

A Knight, a Lady, the wife of a
Knight, a Doctor of Divinity, a Doctor
of Law, or others of like calling, are
to pay as aforesaid for their commit-
ment-fee, having the first weeks dyet
with wine, 5 l.

Also they are to pay for their ordi-
nary weekly Commons with wine,
18 s. 6 d.

Commitments. An Esquire, a Gentleman, a Gentle-
woman that shall sit at the Parlour-
commons, or any person under that de-
gree, that shall be at the same com-
mons, are to pay for their commit-
ment-fee as aforesaid, having the first
weeks dyet with wine, 3 l. 6 s. 8 d.

Also they are to pay for their ordi-
nary weekly Commons with wine,
10 s.

A Yeoman or any other that shall
be at the Hall-Commons, man or wo-
man, are to pay for their commit-
ment fee, having the first weeks dyet,
33 s. 4 d.

Also they are to pay for their ordi-
nary weekly commons, 5 s.

A poor man in the ward, that hath
part of the Box, is to pay for his com-
mitment-fee, having no dyet, 7 s. 4 d.

Also there is due to the said War- License to goe
den 20d. per diem for the whole abroad.
day, and 10d. for every man,
that he may lawfully license to
go abroad.

Moreover the said Warden hath Return of
for return of Writs, as Sheriffs, Writs.
and Bayliffes of Liberties,

have, by which he hath allowance
for return of every Hab. Corp. or At-
tachment, 2 s. 4 d.

Also for every Habeas corpus cum
causa, there are fees for returning the
causes, videlicet,

For allowing the Writ, 2 s. 4 d.

For returning the first cause, 2 s.

For every Execution, 2 d.

For every action, 12 d. Bringing a pri-

Which are due to the Wardens soner to the Bar.
Clerks, and 5 s. to the Wardens ser-
vants, for bringing every prisoner safe
to the Bar.

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Superfed. and discharge, 2 s. 4 d.

Also when any man is committed by
order out of the Courts of Star-cham-
ber, Chancery, Court of Wards, and
Liveries, Court of Exchequer, Court
of Requests, and Court of Dutchie,
the Wardens Servants (being sent to
apprehend them, and bring them to
the Fleet, according to the Tenour

Allowance of
Superfed.

Travelling
charges for ap-
prehending par-
ties committed.

of

of their Commitment) have four pence the mile where they are apprehended, & six pence the mile back again, and the Clark hath 2 s. for making the Writ.

A Table of the due Fees of the Protonotaries Court in the Common Pleas.

These are the Fees due and belonging to the three Protonotaries of the Court of Common-Pleas at Westminster for Entries of Declarations, Pleas, and Judgements. And also for making and entring of Writs, in their severall Offices, and for other dues belonging to them, confirmed and allowed by the late King, by his Letters Patents, under the Great Seal of England, dated at Cambury the 22. of July in the 12. year of his Reigne, and are mentioned and exprest in a Schedule of Fees to the said Letters annexed, and recorded in his Majesties Court of Common-Pleas at Westminster in the Term of S. Michael next following, *Rot. quinto, sexto septimo, octavo, nono.*

*Common Decla.
& Pleas.*

In *primis*, For the entry of every Common Declaration, Common-Plea in Bar, wherein no free-hold is pleaded, common Replication, and Rejoinder in actions personall, 12 d.

*Speciall Nar. in
actions personall.*

For the entry of every speciall Declaration, special plea in bar, or abatement, Free-hold, Replication or Rejoinder, and Pleas subsequent, in sheets, every sheet containing twelve lines at the least, and every line containing ten words.

2 s.

And

And for every sheet exceeding, 8 d.

For every declaration in actions upon the case *Ejectione firme*, accompt and annuity, conspiracy, covent, deceit, partitions, *Specias Narr. in speciall actions.*

tion, *Plegis*, acquiet, and debt upon Statutes, plaint in Assise, and the like speciall actions, and in reall, mixt, and popular actions, if the declaration or plaint exceed not three sheets, 2 s.

And for every sheet exceeding, 8 d.

For the entring of every Bar, Replie, Bar in speciall catton and pleas subsequent in every of actions. the actions last above recited, and in the like actions, not exceeding three sheets, 2 s.

And for every sheet so exceeding, 8 d.

For the Oyer of every Bill, Obligation, Indenture, Record, or Certificate, or the like, entred *in hæc verba*, *Oyer de suites.* not exceeding the length of three sheets, 2 s.

And for every sheet above that length, 8 d.

For recording of every appearance by the Court, *Appearances.* 2 s. 4 d.

For the entry of every recognizance without condition, challenge to the Sheriffe, or Coroners, or to the Array, or other speciall averments, *Recognizance Challenge.* 2 s.

And for the entring of every recognizance with a condition, 4 s.

For every Judgement in debt, trespassse or detinue, without a Tales for the Protonotary, *Judgements.* 2 s.

And

<i>Adjournments.</i>	And for entring of every adjournment,	4 d.
<i>Judgements.</i>	For every judgement with a Tales, besides the Fee above recited,	2 s.
<i>Remanets.</i>	For every Remanet, and Judgment for costs given to the Defendant by the Statute besides the fee abovesaid,	2 s.
<i>Judgements.</i>	For every Judgment in all other actions, as well personal as mixt, and real, and prohibitions, and the like,	4 s.
<i>Satisfaction, Recordatur, discont. Retaxat,</i>	For every Satisfaction, Recordatur, discontinuance, Retraxit, Relinquishment, Nolle prosequi, or the like, in actions personal,	4 s.
<i>Nolle prosequi.</i>	And in real actions,	2 s.
<i>Recoveries.</i>	For the entry of a single Recovery	4 s.
	and the Writ of Seisin thereupon,	10 s. 6 d.
	And for every Voucher more,	4 s.
	For the entry of every Mitrimus, and Dedimns potestatem, for a common recovery,	6 s.
	For the entrance of a Summons, ad Warr. for a common recovery, and the Writ of Summons, ad Warr.	14 s. 6 d.
	For the entry of a Certiorari, to certify a warrant of Attorney for the Tenant or Voucher,	4 s.
	And if for both,	6 s.
<i>Forraign Voucher.</i>	For every Forraign Voucher sent to the Common pleas to summon the Vouchee, if the Record be not above three sheets,	2 s.
	And for every sheet more,	8 d.
	The like fees are to be paid when the Record	

Record is remitted back againe, after
the Voucher determined, 2 s. 8 d.

For the entry of every special Verdict, whereupon a Cur. advisar vult, is
entred, being not above the length of
three sheets, written as abovesaid, 2 s. *Special Verdict*

And for every sheet exceeding that
length, 8 d.

For the entry of every generall verdict, with a Cur. advisar. vult. without a
dict. *General ver-*

Tales, 2 s.

And with a Tales, 4 d.

For the entry of every remittitur of
debt or damages, 12 d. *Remittitur.*

For the entry of every information
upon any penall Law, and signing the
Subpoena only, 2 s. 8 d. *Information.*

For the entry of every surmise for
a prohibition to be granted, not ex-
ceeding the length of three sheets, as
aforesaid, 2 s. *Prohibition.*

And for every sheet above that
length, 8 d.

For the entry of the Oath of every
witness to prove the surmise in a pro-
hibition, or audita querela brought by
an Infant, and the entry of the proofes
de morte & vita vivim, dower, and the
like actions and Suits, 2 s. *Proof de sug-*

For the releasing of any default in
any reall action, 2 s.

And entring the recitall of the grand
Cape, 4 s.

And if under five marks, Nihil

For

- Exami. record.* For examining every Record of *Nisi prius*. 12 d.
- Record in count. Palatine.* For making the record for triall of an issue in any of the County Palatines, for the first three sheets, 2 s.
And for every sheet more after, 4 d.
- Exemplificat.* For the exemplification of any record not exceeding six sheets, 5 s.
And for every sheet exceeding that rate, 8 d.
- Seizin in dower* For the entring of Seizin in dower, and dying seized, the return of the seisin, exceeding not above three sheets. 4 s.
For every sheet exceeding, 8 d.
For entring of Writs for exemption
- Non ponend. in de non ponend. in jurat,* and patents *de essis. libertat. allocat.* and Protections, cognizance of pleas, and the like, according to the rates abovesaid, if they exceed not three sheets. 2 s.
And for every sheet exceeding, 8 d.
- Judgements per default in waste impedit. Qua. impedit.* For the entring the default upon the distress in waste, *quare impedit*, and the like, and Judgement thereupon, if the title or count do not exceed three sheets, 6 s. 4 d.
And if it be more then as aforesaid, for every sheet, 8 d.
- Que warrante.* For entring of *que warrante*, if it exceed not three sheets, 2 s.
For the entry of every plea thereupon, according to the same rate before, 2 s. 8 d.

- For the entry of a Plea of account *Account before*
 made before Auditors, if it be not *Auditors.*
 above three sheets written as above-
 id, 2 s.
 And if more, for every sheet excee-
 ding, 8 d.
 For the entry of every Summons,
 and severance, and aide pryer, 2 s. *Severances.*
 For the admission of an Infant to his
 Prochein amit, Jor Guardian, 2 s.
 And if it be by commission, 4 s. *Aids pryer.*
 For entring of the Defendants dis-
 charge upon a *cap. pro fine*, or for a con- *Cap. pro fine.*
 empt, 2 s.
 For the like upon Rescous, returned
 and admitted to his fine, 4 s.
 For traversing of a rescous, and Issue,
 hereupon. 6 s.
 For entring of the allowance of eve-
 ry generall and speciall pardon of
 Outlawry before Judgement and af-
 ter, 5 s. 4 d.
 For entring of a *Dies dat*, in Debt,
 etinue and trespass, 12 d.
 And in all other actions, 2 s.
 For the entring of the receit of a
 feme covert, Tenant in tail, Lessee for
 years, or the like, 2 s.
 And for the entry of the Plea, if it
 exceed not three sheets, 2 s.
 And for every sheet exceeding,
 8 d.
 And if the Receit be by Writ, then
 more for entring of the Writ, 2 s.
 For the entring of an Assize delive-
 red in the Common-Pleas by Justices
 of

of assise to be inrolled, for every sheet,

12 d.

And if the assise come into the common Pleas by Cirtiorar. then more for entring the Cirtior.

2 s.

Abridgement.

For entring every abridgement of the demand in dower assise, or the like,

2 s.

Pone.

For the entring of every pone to remove a plea by writ out of the county Court there holden by Justices, and for the return of the pone,

4 s.

Mittimus.

For the entring of any record sent in the common pleas by *Mittimus*, or otherwise; and likewise for the entry of every *Rege in consilio*, or such like, if it exceed not three sheets,

2 s.

Certificate of Bastardy.

For every sheet so exceeding, 8 d.
For the entring every Certificate of Bastardy certified by the Bishop, and the awarding of the Writ and Judgment thereupon,

6 s.

*Journies accou-
counts.*

For the entry of the License of the Court, to purchase a new writ by journies accompts,

2 s.

Delivery of Records.

For the entry of every originall writ delivered of record in reall, or mixt actions,

8 d.

Challenge.

For the entry of every sheet above three sheets of every challenge to the Sheriff or Coroners, or to the array, or other special averments, or the like,

8 d.

Remanet.

For the entry of every remanet in reall actions,

4 s.

For the entry of every remittitur in reall

reall

all and mixt actions,	2s.	
For the entry of every sheet above		
three sheets of every aid Pryer,	8d	
For the entry of an admission of a		<i>Aid Pryer.</i>
Guardian, if it be by Commission, and		<i>Admission to</i>
<i>Adimus,</i>	6s.	<i>Guardians.</i>
For the entry of a privy Seal, for		<i>Privy Seal</i>
every sheet,	8d.	
For the entry of the License of the		<i>License.</i>
Court to compound upon penall Sta-		
tutes,	2s.	
For entry of every warrant of Attor-		<i>VVarrants of</i>
ney made by the Tnants in common		<i>attorney,</i>
Recoveries, or the like, after their ap-		
pearance at the Bar,	2s.	
For every Judgement by speciall		
confession of of the Title in <i>Quare imp.</i>		<i>Qua. Imp?</i>
or the like, if it exceed not three		
sheets	4s.	
And for every sheet after,	8d.	
For the entring of every speciall	1s.	<i>Speciall Impar-</i>
parlance,	2s.	<i>lance,</i>
For the entring, of every Commit-		<i>Committitur.</i>
tur of a Prisoner by the Roll, being		
brought to the Bar by writ, and every		
finder of the body in discharge of the		
Baile,	4s.	
But if it be without writ, then in		
either case but,	2s.	
For entring of every demand of a		<i>Remand.</i>
prisoner to appear and remand the		
aid prisoner,	4s.	
For the Entry of every Effoyne in		<i>Effoyne.</i>
the Plea Rolls, as upon Wagers of		
law,	12 d.	
For entry of the Baile upon every Bail.		
§		<i>Reversall</i>

Reversall for insufficiency of Exigent,
Nar. sur. demise or of the return, 2s. 4d.

For the entry of every declaration
 in debt upon demise, or the like special
 Declaration, if the Declaration exceed
 not three sheets, 2s.

And if such Declaration exceed the
 number of three sheets, then for the
 entry of every such sheet, containing
 twelve lines, and every line tenne
 words, 8d.

Common Decla. For the entry of every severall count
 upon an Originall in Debt, Detinue,
 Trespass, and the like, 1s.

Actions on the For the entry of every severall count
case. in actions upon the Case and ac-
Accounts. count, and the like upon severall
 dayes, if the count exceed not three
 sheets, 2s.

And for every sheet so exceeding, 8d.

Speciall condi. For the entry of every speciall con-
 dition, or indorsement of any obligati-
 on entred *in hec verba*, not exceeding
 the length of three sheets, 2s.

Common cond. And for every sheet so exceeding, 8d.
 But if the condition be in debt for
 payment of mony, at one day, or under
 the length of two sheets then for the
 entring thereof, but 1s.

Mittimus. For the entring of every *Mittimus* or
Certiorari. *Certiorari.* and the return thereof, 4s.

But if the return thereof exceed
 three sheets, then for every sheet so ex-
 ceeding, 8d.

Prohibition. For entring of the Count in a Pro-
 hibition, and pleading thereupon
 after

After an appearance of the Defendant,
not exceeding the length of three
sheets 2s.

And for every sheet above that
length 3d.

For the entry of every writ of at-
tainment, or false Judgement, 2s.

For the entry of the return thereof,
and the assignment of errors, or false
Oaths, not exceeding three sheets 2s.

And for every sheet more. 3d.

For the entry of every sheet above
three sheets of the Oath of every wit-
ness examined to prove the surmise
in a Prohibition, or *Audita querela*
brought by an infant, and the entry of
the proofes *De morte & vita viri* in
dower, and the like actions, and
Suits, 8d.

*Attaint, false
Judgement.*

*Prooffe in a Pro-
hibition.*

*Audita querela
and Dower.*

*Fees due to the Prothonotaries for
Writs, and the Entries of them
amongst other dues.*

Fees for writs.

For every Writ of Prohibition, or
consultation, not exceeding four
sheets 2s.

Prohibition.

For every sheet so exceeding, 4d.

For every *VVithernam* return habent.

VVithernam.

after appearance, second deliverance,
*VV*rit of priviledge, *habeas corpus*, *Pro-*
cedend. certiorari, summons & *Resum-*
mons, *Petic. cape, ve fac. sci fa. Elegit,*
extent. supers. Subpœna *VV*rit to the

*Habeas corpus.
sum & al bre:
spenal.*

Bishop, Attachment in, *Ass. Distri. Jur.*
 Habeas Corpus, and Distringas in *Ass.*
 & attainr, and the like, *habere Fac.*
possessio nem, Writs of view, *Mittimus*,
 Idempnitat. nobis, and every other spe-
 ciall Writs, 21.

Entry of VVrits

For the entring of every such Writ,
 which requireth an entring not exceed-
 ing foure sheets, 25.

And if more, for every sheet as a-
 bovesaid, 3d.

For every *Ca. fa. & fi. fa.* 6d.

Ca. fa. fi. fac.

Testat distr.

Inquire in trusf.

For every *Testat. sur. ca. fa. & fi. fa*
distring. ad deliberand. and VVrits to
 inquire of damages in trespasse and
 Replevin, 12d.

For VVrits to inquire of damages in
 Covenant, Ejectment, actions upon
 the case and the like, 25

Inquir. in casu.

Capi & Exi pro.

fine

For every *Capias pro fine*, 6d
 For the *Exigent*, upon a *Capias pro*
fine, 10d.

Intrac.

Return. Br.

For the entry of the return of every
 VVrit in the Prothonoraries Roll other
 then the *ca. fa.* returned *non est invent.*
 and the *fi. fa* returned *nulla habet bo-*
na, whereupon further process is awar-
 ded not exceeding foure sheets, 25

And if more, then for every sheet 3d.

Baile sur privi

Habeas Corp.

For the entring of every VVrit of Pri-
 viledge, or *habeas corpus*, with the Baile
 for one cause, 6s

And for every name more, 25

Committitur

For entry of every *Committitur* upon
 a *habeas corpus una cum die & causa*, 25

And

Jur.	And for every other cause,	2s.	Reversall.
aff.	For every Reversall upon an outla-		
Fac.	ry for default of Proclamation with		
mus,	one name, and the Baile, or <i>Nolli pro-</i>		
Spe-	<i>sequi</i> ,	4s. 4d	
2s.	And for every name more,	2s.	<i>Ca. sa. & fi sa.</i>
Writ,	For every <i>Ca. sa. & fi sa.</i> after a de-		<i>pt. devastavit.</i>
ceed-	<i>vastavit</i>	2s	
2s.	VVhereof by allowance from the Pro-		
as a-	thonotaries the Clark hath had,	8d.	<i>Inquir. casu.</i>
8d.	For every sheet exceedning foure sheets		<i>&c.</i>
6d.	of writs to enquire of damages in Co-		
fi. sa	venant, Ejectments, actions upon the		
its to	case and the like tions,	4d	<i>Liberat.</i>
and	For the writ of <i>Liberat.</i> or the like		
12 d.	speciall writs,	as.	
es in	VVhereof by allowance from the Pro-		
upon	thonotary the clark hath had,	8d.	
2s	For the entry of every such writ, and		<i>Int. con. Br.</i>
6d	the entry of every other speciall writ,		
pro-	which requireth an entry not exceeding		
10d.	foure sheets,	2s.	
every	And for every sheet so exceeding,	8d.	<i>Distingas.</i>
other	For every <i>Distingas</i> in detinuc,	12 d.	
luent.	VVhereof the clark by allowance from		
et bo-	the Prothonotary hath had,	4 d.	<i>Inquir in case</i>
awar-	For writs to inquire of damages in		<i>&c.</i>
2s	Covenant, Ejectment, actions upon		
et 8d.	the case and the like actions, if they		
f Pri-	exceed not foure sheets,	2s.	
Baile	VVhereof by allowance from the Pro-		
6s	thonotary the clark hath had,	8d	<i>Committitur.</i>
2s	For the entry of every <i>Committitur</i> ,		
upon	upon a <i>habeas corpus unacum die & cau-</i>		
ausa,	<i>sa</i> ; with one cause returned, besides		
2s	the entry of the writ,	2s.	
And			

The Compleat Attorney.

And for the entry of the Writ, 2s.
 And for every other cause returned, 2s.

*Proccs. Sur.
 Informations.*

For the signing of all Processe upon
 information, excepting the first Sub-
 pœna. 1s. 4d.

*The Prothonotaries Clerks
 Fees.*

Copies.

Inprimis, for the Copies of common
 Declarations and pleas, for every
 sheet containing twelve lines, and eve-
 ry line ten words, 4d.

Draughts.

For every sheet in reall and mixt a-
 ctions, and actions upon any Statute,
 and the like, 8d.

Continuance.

For drawing of every speciall decla-
 ration, and Plea for every sheet, 8d.

For every continuance every Term
 of every issue, Writ imparlance, demur-
 rer, of special verdict, or adjournment 4d.

Exemplification

For exemplifying every Recovery
 with a single voucher, 4s. 6d.

For exemplifying of a double vou-
 cher, 6d.

And for every voucher more, 12d.

For exemplifying of any Record not
 exceeding eight sheets, 5s.

*Drawing of
 writs and en-
 tries thereof.*

And for every sheet more, 6d.

For drawing of every extraordinary
 long Writ after the rate of every sheet,
 8d.

And for the entry thereof (if it so
 require) for every sheet, 4d.

For

For a copy of Judgement for every sheet,	8d.	Copies of Judgements.
For the entry of every writ, and the Return thereof into the Prothonotaries Remembrance for drawing up a Judgement, if it exceed not three sheets	6d.	Entries in rememb.
And for every sheet after,	4d.	
For entering of every common rule into the Bill of Pleas, or common Remembrance,	4d.	Rules.
For the entering and ingrossing every Summons for a recovery, and for the making of the writ of Summons,	2s.	Sum. for recoveries.
For the entry of every <i>Mittimus</i> , and <i>Dedimus potestatem</i> for a Recovery,	2s. 6d.	<i>Mittimus</i> .
For ingrossing of every <i>Nisi prius</i> after the rate of every sheet,	4d.	<i>Ingro. nisi prius</i> <i>Intr. case testat.</i>
For entering of every <i>Testat sur. ca. fa. Offi. fa.</i>	4d.	Searches.
For the Search in every term in the Prothonotaries, Office in his doggers, or Remembrances,	4d.	
For the issuing out of the court money, of the party receiving it,	1d. in l.	Court money.
For the making of every long writ, as Prohibitions and the like, for every sheet,	4d.	Making long writs.
For the prosecution and issuing out of proccesse for the King to bring in the party for to make fine for his contempt until the party render himselfe, or be Outlawed, besides the fees of the Court,	3s 4d.	Cap pro fine.
And if there be cause of prosecution		

The Compleat Attorney

on after the exigent returned, the more 3s. 4d.
Copy suggest. For the copies of suggestion to grand
Tract. Prohib. & Prohibition, for every sheet, 8d.
speciall verdict. For drawing of every surmise to have
 a Prohibition, speciall verdict, and the
 like, for every sheet, 6d.

*The Prothonotaries Clerks Fees
for Informations only.*

Informations. **F**OR ingrossing of every information, 8d.
 For a copy of the said Information, on, if it amount to the number of five sheets of paper or upwards, 3s. 4d.
 If it be under the number of five sheets, then for every sheet, 8d.
 For the making of every *Capias pro fine* upon an Information, 6d.
 For entering of the generall issue upon the Roll where the Information was first entered in the term it was first exhibited, 8d.
 For the Registring of every License to compound in the officebook, 4d.

*An ancient Fee due to the second Prothonotaries clerk only.**fine.*

FOR recording every fine acknowledged at the Bar, by writ, and moved by a Sergeant, 4d.
 Fees

*Fees due to the Secundaries of the Secundaries fee
Prothonotaries in their
severall Offices.*

For the copy of every common rule,	Copies of Rules 4d
For taking a note of the rule of the Judges in court upon a motion of a Serjeant, for drawing the same rule in paper in Latine words, and entring it into the Bill of Pleas, and the copy thereof, the draught not exceeding six lines in paper,	Drawing and entring of Rules. 8d.
If the rule exceed six lines, then	Wagers of Law 12d
For every wager in Law, in Court or Nonsuit of the Plaintiff, upon a Wager of Law,	12d
For the entry of the Commititur of any Detendant to the fleet in Execution of any Judgement, or otherwise in Court, and for making a copy thereof for the Warden of the fleet, containing the cause of the Commitment,	Commititur. 12d.
For the entring of every Commitment to the fleet, of any person yeelding himselfe in discharge of his Baile, and for the like copy,	12d
For attending the Judge from his chamber to Westminster, to take a privy verdict tried at the Bar,	Privy verdict. 3s. 4d.
For reading the Record of a demurrer in Court or verdict,	Rec. Record. 12 d.
For taking Baile in Court.	Bailes. 12d.
For	For

*The Compeat Attorney.*Copies of Issue &
Jurors, names.

Trialls at Bar.

Satisfas Record
Discontinuance,
Satisfaction.

Interrogatories.

For entring of an admission of an Infant to his Prochein Amy, or Guardian in the Prothonotaries remembrance. 12d.

For the copy of the Issue and Jurors names to be delivered to the Jury upon any triall at the Bar, 12d.

For reading of evidences upon trialls at the Bar of each Party, Plaintiff, and defendant, 3s 4d.

For entring of every satisfaction by speciall warrant, Recordatur, and Discontinuance, 8d.

For every satisfaction by generall Warrant. 4d.

For entry of every Will or Letters of administration to inable an Executor, or administrator to acknowledge satisfaction, and the entry of the satisfaction, 12d.

For every copy of Interrogatories, depositions of persons examined upon Interrogatories by order of the Court for every sheet, 3d.

*Per breve de Privato.
sigillo.*

Wolsely.

Fees

Fees for the Upper Bench.

A note of Fees due, and time out of mind used to be paid to the Prothonotaries or chief Clerks of the Court of Upper Bench, and to their Clerks, as the same was presented upon Oath by virtue of commission in April 1650 by 29 attornies of the same Court, and hitherto taken.

Writs.

FOR a Latitat.	5s. 1d.
Supersed.	Prohibition.
Exigent in Appeale.	Consultation.
Distring in Attaint.	Proprietary probanda.
Habeas Corpus.	Distr. in derinue.
Certiorari.	Inquir. de valor.
Procedend.	Rescum
Elegit.	Reattachment.
Subpoena.	Vesa defend. in Audia
Retor. nend.	querela.
Withernam.	Here fac. seiam & pos-
Second deliverance.	session.
Restitution.	Respons. in attaint.
Scire facias.	Rend expon.
Diminution.	Bre. Epo.
Libell' obend.	Mittimus.

All these are accountable for to the Prothonotaries, viz. for every one two shillings, out of which they allow the Clerks for writing four pence.

Venire

<i>Venire fac.</i>	<i>corpus.</i>
<i>Distring' Jur.</i>	<i>Averm. versus vic.</i>
<i>Ass. & plur. cap.</i>	<i>Fieri fac</i>
<i>Casa.</i>	<i>Testa. si fac & casa</i>
<i>Inquir. de Dair.</i>	<i>Distr. nuper vic.</i>
<i>Habeas corpus sur. cepi.</i>	<i>Non amittas.</i>

For every of this besides the Seale, 4d.
And for every deliberat. *de recordo*, 4d. And
for the Jura of the Distr. of Nipri. 4d. But
these have been allwaies to the Prothono-
tries clerks, and are no accounted of to the
Prothonotaries.

In every action wherein the plaint. recover
damages to the value of 1 3 l. 6s. 8d. He
payeth 12d. in the pound for damage cleared
when the Judgement is signed.

Upper Bench Fees for entries.

FOR every deed how short soever
For every action of trespass,
For every not guilty,
For every Justification in Trespass
For every Replication,
For every action of the case not above three
sheets,
For every generall issue to it,
For every Eiectione firme
For every Declaration in appeal,
For every generall issue therein
For every recogn. sur. Recorp, for every
sendant severally,
For every Deposition upon all Prohibition
For every Judgement by Circumstanc,

The Complat Attorney.

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	Out of which the Clerk is allowed,	8d
vic.	or every other Judgement,	2s.
	Whereof the Clerk is allowed,	4d.
cas.	or every dismissal,	2s.
vic.	or every commitment in Execution,	2s
	or every satisfaction,	3s.
	or every appearance recorded,	2s.
ale,	or every Non prof.	2s.
4d. A	or every action of Debt, Detinue or Tres-	
d. But	pass	1s.
tho not	or every generall issue therein	1s.
of to t	or every condition performed	2s.
	or every Replication to it,	1s.
cover	or a writing denied, and keeping of the	
3d. H	writing,	2s
e cle	or every Justification in Battery,	2s.
	or every <i>Audita querela</i> , how short soever,	2s
	or every speciall imparlance,	2s
es.	or every generall Imparlance upon the	
	Plea Roll,	1s
	or every default upon Record,	2s.
	or such a suggestion upon a Prohibition how	
	short soever,	2s.
	or every recognizance to it,	2s.
2s. 8	or every writ of Error how short soever,	3s. 4d
e thr	or entring the Errors,	2s.
	or entring in <i>Nullo est erat</i> ,	2s.
	or every Diminution,	2s
	or abatement of a writ of Error and license	
	to sue a new one,	2s
	or entring of the same,	2s.
ery d	or every Recognizance single, or with con-	
	dition,	2s.
ition	or every inrolement whatsoever, longer	
	then three sheets,	6s. 8d.
r, 4	For the rate for a roll on both sides,	6s. 8d.
O	For	

For halfe a Roll, 3s.
 For every Baile by Recognizance, 3s.

Vpper Bench Fees of Clerkes and

Attornies.

FOr their fee in every cause for every
 Term, 3s.

For their fee, at every Nipri, and inquiry
 damages, 3s.

For their fee in every Appeale, and affize
 every Term, 6s.

For drawing every Declaration not exceed-
 ing a sheet,

For every sheet above one,

For drawing every action on the case and con-
 venant, how short soever, 3s.

For drawing every Ejectment,

For every sheet ingrossed in Parchment,

For drawing a Surmise upon a Prohibition
 every sheet,

For drawing special pleadings, every sheet

For copies of Declarations, Pleas, or other
 things, every sheet,

For continuing every cause every Term, 4s.

For entring all things above three sheets
 every sheet,

For every Judgement by circumstan.

For making every Baile,

For making every Bil of Middlesex, distring-
 unper. vic. and He corp. lur corpus per pre-
 ceptum thereupon,

For making every He corpus ad fachecon-
 cum privileg. certiorari. precedend. elegit. &
 habere fac. possessionem, besides 4d. allowed
 by the Prothonotary, 1s. 8d.

The Complot Attorney.

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3s. 6d. every sheet in a VVris of Inquiry, Pro-
 2s. 6d. dition, Consultation, &c. 4d.
 s and entering of every [Scire fac.] 1s.

Fees received by the Secondary.

For ever
 3s. 4d. Or taking the acknowledgement of a
 inquiry Deed in court, 2
 • 3s. 4d. signing every Judgement by confession,
 affize [nihil dicit, verdict & demurrer.]
 6s. 8d. for acknowledgement of every Deed,
 t exceed every Judgement pronounced in open
 court, every rule to alter a Visue, for e-
 8d. very rule, for a Prohibition, Consultation,
 e and attachment, &c. he receiveth for the poors
 3s. 4d. x, 1s.
 allowance of a writ of Error [coram nob.
 ment, & den.] 2s.
 prohibition thereof to the Box, 1s.
 1s. an allowance of an [audita querela,] 2s.
 sheet secret to the Box, 1s.
 or other
 4d.
 term, 4d.
 sheet

Vpper Bench fees.

Or every common Baile, 1s. 2d.
 8d. For a speciall Bail upon a [heaf. corpus,
 5d. certiorari,] or attachment, 4s. 1d

Fees received by the Secondary for the Judges

Or every [Habeas corpus ad fac. & recipi-
 8d. end.] 4s.
 hecom every Procedendo, 4s.
 regit. every Certiorari to remove a forraign
 How attachment, 4s.
 1s. 8d. a Procedendo thereupon, 4s.
 For For

For every *Habeas Corpus cum privilegio*,
Out of every *Latitat* they have,

Fees received by the Judges Clerks

For every warrant for a [*Habeas corp.*]
Any thing to which the Judge putteth his
hand in the Term time,
And in the Vacation,
For the acknowledgement of a Deed which
he saith is for his Master, 6s. 8d.
And for his own fee,
For taking the Deposition of witnesses upon
a Suggestion for a Prohibition for every
witness 6s. 8d.
And for his own fee for every witness,

Fees paid the Clerk for the papers.

For copying every speciall Plea, every
sheet, 4d.
For making the paper booke either issue or de-
murrer, every sheet 8d.
For entring into his book every Record to
bee read in court 2s.
For entring into his book every cause, to hear
counsell on both sides, 2s.
For entring every tryal at Bar, 1s.

The Keeper of the Postes.

Hath for for the receiving marking, keep-
ing, and delivery of every postea, 4d.

The Keeper of the files of Declarations

Hath for the filing, paying, and shewing
the files of every clerk, for every term 2s

Fees paid to the Clerk of the Rules.

FOR entering every Rule except generall
Rules for answer, 4d.

For a copy of every rule, 4d.

For every generall rule for answer, being
above three, 2s.

For every rule given in court, with a copy
for a Prohibition, or consultation, he taketh 12d. and the due is but 8d, which hath
been taken not above 25. years, 8d.

For every rule with a copy given in court
the last day of a terme hee taketh 12d,
whereas the due is but 8d. which hath been
taken this two or three years, 8d.

For every copy of a rule after the continu-
ance day he taketh 8d. whereas the due is
but 4d. which hath been taken this two or
three years, 4d.

All such Affidavits as are read in court, he
claimeth this two years, or thereabouts, to
have the keeping of them, and taketh for
copies both of Plaintiff and Defendant at
his own discretion, which formerly hath not
been.

THE Secundaries Clerk, for making and keeping the Remembrances of Entries &c. hath of every Clerk every term, 8

Keepers of the Bailes.

FOR entering the common Bailes into parchment Rolls every term, every Clerk of the Office giveth what he pleaseth.

Keepers of the Rolls of Writs

FOR carrying the Rolls of the Writs to the Hall and the Office, he hath of every clerk every term, what he pleaseth.

Fees paid to the Custos Brevium, and his Clerks

FOR every Record of *Nisi prius* in a short Action of trespass. 4s. 6d.

For every other Record how short soever. 3s.

For every full press of *Nisi prius*, or *Mittimus*, 6s.

For every *Nisi prius* out of the Crowne side. 6s. 8d.

For every full presse there, 6s. 8d.

For every *Nisi prius* upon an Inditement of murder, for every name that pleadeth to Issue, 6s. 8d.

For every short Exemplification in trespass. 10s.

For every Exemplification containing a large skin, 1l.

For the like in the Crown 2l.

For every Exemplification side. *ne firme in Ejec^{ti}o* 13s. 4d.

For

The Comptrol Attorney.

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For filing a Writ being a <i>post diem</i> upon the <i>Angl.</i>	4d.
For all pt. <i>Terminums</i> at any thing after the first weeke ended in the second term,	1s. 8d.
For every Warrant of attorney in murther,	1s.
For every Sheriff's VVarrant,	8d.
For every other VVarrant or attorney,	4d.
For every search for a Roll for ten years last past,	6d.
For every search above ten years last past,	3s. 4d.
For search for Rolls for the six last terms,	6d.
For search of every file of Declarations, Bayles Judiciall and other VVrits after ten years,	1s. 4d.
For the Copy of every sheet between parry and parry,	4d.
For a Copy of a Deed inrolled, for every sheet,	8d.
For a file of the <i>Angl.</i> for every term after one,	4d.
For the Copies of every writ or appeale, every sheet,	8d.

Fees now paid to the Custos Brevium his Clerkes

FOR writing every <i>Nisi prius</i> or <i>Mittimus</i> . being but one presse,	1s. 6d.
For every presse more then one,	1s.
For writing every exemplification in trespassse or F. judgment,	3s. 8d.
For writing every large skin of Parchment Exemplified,	6s. 8d.
The fees for writing every <i>Nisi prius</i> or <i>Mittimus</i> , were uncertain, untill about Anno 2. Jas. And then it was ordered by the Judges, that the Clerks should have for writing of the first presse, 1s. 6d. and if more, then every other presse 12d. and every full presse to contain 60 lines.	

*Fees claimed by the Cryer and Porter.
As Cryer.*

FOR calling a Jury,
For every Oath given in Court,
For taking a privy Verdict,
For every argument in Law,
For every wager of Law,
For every admission to a Guardian,
For a Bail taken at the Bar,
For calling a Non-suit,
For calling the Record,
For calling a default,
When a Pardon is bleaded,

23.
4d.
4s.
3s.
3s.
6d.
3s.
4d.
1s.
1s.
2s.

As Porter.

FOR every tryall at Bar,
For every privy Verdict,
For summoning the Wager men,
For a Baile taken at Bar,
For a Record called,
For a default called,
For a pardon pleaded,
For a discharge of a Re'cous,
For a Baile taken in Court,

5s.
2s.
3s.
2s.
6d.
6d.
2s.
4d.
6d.

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Of all these Fees mentioned and claimed
by the Cryer ; and Porter, these fol-
lowing have been paid as due, during
the time of our knowledg.

As Cryer.

FOR calling a Jury,	1s.
For swearing every Witnesse,	4d.
For a Wager of Law,	1s.
For a Non suit,	1s.
For a default of a Record,	1s.
For a defect de lege,	1s.

As Porter.

FOR summoning the wager men, 3s:
Also the Porter receiveth more for the
Wagermen, where the Defendant waget his
law, or is ready to wage it, 1s.

*Fees received by the Clerk of the Er-
rors immediately after the Sta. 27 Eliz.*

FOR the Lord chiefe Justices fee for the allowance,	17s. 4d.
For the Receipt,	5s.
For the Return,	2s.
For the certificate of the first presse,	6s.
For writing the first presse,	2s.
For a Supersedeas,	2 s. 7 d.

T 3

These

These Fees amounting to 35s. 3d. were paid upon the allowance of the Writ, and for the Superfedeas.

For the certifying of the Record for ev'ry presse besides the first, 6d.
 For writing of every presse after the first, 1s.
 For the Roll, 1s.
 For marking Non prof. upon the Roll, 5s.

Also immediately after the making of the Statute of An. 3 Jac. The Fees taken for the Bail were as followeth, upon a Writ of Error.

To the Prothonotaries for the Recognizance, 2s.
 To the Judges clerk, 2s.

Fees upon a writ of Error.

For making the Baile, 4d.
 For drawing and entriug the Recognizance, 4s.

Now, and for the space of thirty years last past, he hath taken upon the Receit of every writ of Error and Superfedeas in a gross sum, 2l. 6s. 8d.

Also for certifying every presse besides the last, 6s. 8d.

For writing every press besides the first, 1s.
 For every Superfedeas besides the first, with the Seale, 9s. 3d.
 these

These Fees last mentioned, were set
down by Sir John Popham, late Lord
Chief Justice; Ex relatione Edi. Page
ser. Error, but we do not certifie it
upon our knowledge.

ALso he taketh for every Baile in grosse
sum, 19s. 4d.
For every Writ of Error, tam in reditione
iudicii, quam in adjudicatione executiones, he
taketh double fees.

The Marshals Fees as they were certi-
fied by Sir Wil. Knowls Knight,
sometimes Marshall of the
Kings Bench.

Inprimis, for enlargement of every priso-
ner which is termed his admission fee 1os.
Also he demandeth of every prisoner upon
his enlargement a fine for not wearing of irons

For execution in every pound: 3d.
For actions in every pound 1d. ob.

The Marshall taketh for every dismissal
more then the former fee of ten shillings, 8s. 8d.
The Deputy Marshall, & Marshals men, take
for every prisoner that is committed in court,
5s. 6d.

And for every prisoner committed from the
Judges chamber, 2s. 6d.

The Deputy Marshall taketh for the allow-
ance of every Habeas corpus, 2s. 6d.

*The Compleat Attorney.
The Clerk of the Fines.*

THERE was an Office invented & erected about 6 Jacobi, whereby is taken upon the filing of every declaration in debt, where the debt is above 40 li. and not above a hundred Marks, 3s. 4d. And above a hundred Marks, and not above a hundred pound five shillings, and after the same rate, and also every action on the case, & trespass for goods where the damages are land above ten pounds the like rates, so that the Plaintiff or Defendant be not a person privileged, nor the Defendant in *Custodia Marr.* whereas before 6 Jac. in all our memories, no such money were paid, or demanded.

Fees for tryalls at Bar, taken by several Officers.

T He cryer for calling the Jury,	2s.
For swearing every wittnesse,	4d.
The Porter for keeping the door,	5d.
The cryer for a Non-suit,	2s.
The Deputy Marshall,	2s.
The tipstaves, or Marshalls men, for a verdict,	
<i>sedente curia,</i>	8s. 6d.
If the Jury lye together all night,	17s. 8d.
The Judges foot-cloathmen, 14d. a piece,	4s.
The Secondary receives for a verdict in court,	2s.

And for a privy verdict, 13s. 4d. which hee saith is thus divided, (viz) the Judge taketh the verdict. 6s. 8d. to the Secondary and the rest being 4s. 8d. among the Officers that attend.

Of all the Fees mentioned we present
these following to be due.

To the Cryer for calling the Jury,	1s.
For swearing every witness,	4d.
For calling a Non-suit,	1s.
To the Debuty Marshall,	2s.
To the Porter for keeping the doors,	1s.
To the Secondary, for taking a verdict in Court.	2s.
To him for a privy verdict,	13s. 4d.

And now they take no other fees then
these last mentioned.

We pay into the Crowne Office for estrea-
ing every amerciament,

1s.

Also there is paid to the Secondaries Clerk
every one of the Prothonotaries Clerkes
every Term that hee faileth to bring in his
Rolls within twenty foure dayes next fol-
lowing after Trinity, Michaelmas, and Hilla-
ry Terms respectively, and within ten daies
next after Easter Term, 12d. whereas for-
merly they had time untill the Efloyne day
of the next Term, to bring them in without
paying any fee.

Also there is paid to the Secondaries clerk
for filing of every common Baile, after six
dayes, after every Term over and above the
fee,

4d.

The table of which severall payments last
mentioned, is remaining in the Kings-
Bench Office.

Of

Fees due and received by Philizers.

F Orevery Cap. Alf. Plur. Exigit, Proclamation & Distring in trespasse,	6d.
For every Exigent and proclamation in Replevin,	6d.
For every Pone. cap. Alf. Plur. testar. in Replevin,	6d.
For every Superfed. upon the mean process aforesaid.	12d.
For every cap. Alf. Plur. testar. and Exigit in Truf. sup. calum. Action on a statute, Rap. custodie Truf. contra formam ordinationis, Ejectments, and such speciall Writs,	12d.
For the proclamation thereupon,	12d.
For the Distring thereupon	12d.
For every Cap. Alf. & Plur. in appeal of Mayhem,	12d.
For every Cap. Alf. & Plur. in an appeal of Robbery,	2s.
For every name in every Cap. Alf. & Plur. in appeal of Murther,	2s.
For every Proclamation in every appeal,	2s.
For every general Cap. utl. & deliberatur de recordo,	10d.
For every speciall Cap. utl. & deliberatur de recordo,	2s. 4d.
For every writ of VVithernam second deliverance, and return habend. before a vowry,	2s.
For every venire facias,	9d.
For every Distring. Jur. deliberat de recordo, & jur. Nisi prius,	1 s. 2d.
For every Subpena upon issues by original,	12d.
For entry of Declarations in trespasse by original.	1s.

For

entring not guilty thereunto,	1s.
entring every Ejectment and action up-	
the case not above three sheets,	2s
onger, then for every sheet,	8d.
every generall imparlance,	4d
every speciall imparlance,	2s
opies of writs of Attaint, before judge-	
nt per sheet,	8d.

*es due upon Trials at Guild Hall, to
the Officers of the Court.*

to the Clerk that reads the Record and	
Evidence,	1s.
the Associate,	1s.
every default,	2s. 4d.
the Cryer,	1s.
swearing every VVitnesse,	4d.
the Marshall,	2s.
the foot-cloath,	1s.
the green cloath,	1s. 6d.
the Door keeper,	1s
the Hall keeper,	1s.
the Jury men,	8s.
the men every one,	4d.
for summoning and keeping the Jury,	4s. 4d
lights,	1s.
the keeper,	1s.
return of the postea	2s.
to the associate taketh in every cause	
where the Plainriffs attorney is not present,	
and of every Defendant which appeareth,	
and hath not his attorney in court, for a war-	
rant of attorney, 4s.	The

The Exchequer.

THIS court hath formerly been a court of much practice, & in great esteem; but late, since the Revenues of the crown have sold, there is but little business to what formerly, and very like to be far less, when there will be little or nothing at all left of what related to the crown, save onely the custome Impost, Tonnage, and Poundage.

The chief Judges of this court are the Chief Baron; & three other Barons of the Court with whom also sits one other who hath the name of a Baron, but hath no voice in court as to any business, save the taking account of Sheriffs, Auditors, Bayliffs Receivers,

The subordinate Officers are,

1. The Kings remembrancer, now called the States Remembrancer, in whose Office are severall Attornies.

2. The Lord Treasurers Remembrancer and in that Office likewise severall Attornies.

3. The Clerk of the Pipe.

The Controller of the Pipe, and severall Clerks there.

4. The Clerk of the Office of Pleas in that Office, there are likewise severall Attornies.

5. The Clerk of the Estreats.

6. The forraign Opposer.

7. The Auditors of the Court which were anciently many.

8. Tellers and one of them in chief, and under Tellers their Substitutes.

9. The clerk of the Tallies.

10. The Chamberlaine of the Court.

The chiefe Cryer, and severall other Cryers.

The Usher, and Porter of the Court, and Court
Keeper,

The keeper of the Records.

This court of Exchequer hath in it a divers way of
proceeding.

As first, There is a course of proceeding sutable in
most things to the common Law, proceedings in o-
ther Courts, and that is, of their (*Quo minus*) out of
the Office of Pleas, which writ was anciently to be
granted to such party only, who was either Tenant
or Debtor, or some wayes accountant to the King; and
therefore the end of the writ concludes, that he is for
default of the Defendant, giving him satisfaction, less
able to satisfie the King; but at this day the practice is
grown generally in all cases almost, but more especial-
ly in wales, where no Writ out of the Upper Bench,
or common Bench lies, save only a *Capias ut Lega-*
tus and this Writ, which so far relate together, as
that they both pretend to be by way of Perogative for
the King: The Rules formerly given for proceedings
in common Law in upper Bench, &c. will serve you
for this.

The Exchequer Chamber.

THis Court is as it were the Chancery of the Ex-
chequer, in which sits as the Chiefe Judge of
Justice, formerly the Chancellor of the Exchequer,
being assisted with the Lord Chiefe Barron, and the
Barons of the Choise; and now that there is no Chan-
cellor, the Lord chief Baron, and the rest of the ba-
rons, and the proceedings had there before them doe
much resemble the proceedings in the Chancery,
and

and therefore refer you to what you will finde following, of the proceedings in the court of Chancery, which may be som guide to you in this.

The whole practice and proceedings which are generally in use at the Exchequer Bar, do relate for the most part to the two Remembrancers of the court, which as I told you before, were the Kings or States Remembrancer, and the Lord treasurer or committer of the Revenue Remembrancer.

There hath been anciently very much businesse and that very various in the Kings Remembrancers Office relating to the Depters, tenants, Farmers, Receivers, Accountants, Bayliffs, and Sheriffs; for Debts or Duties due to the King, &c.

In the treasurers Remembrancer were wont to be all licenses of Alienation pleaded, and all Proces to issue out for the fines non paid upon them, and also all Proces for non payment of respite of Homage, &c. And these severall Offices do in many things also follow the practice of the common Law.

The difference between this court, and the courts of Upper Bench and Common Bench in point of appearance at the beginning of a Suit, take as follows.

In the Exchequer for the generallity, the Proces is a *Subpœna*, to which the Defendant may appear either in person, or by his attorney, so that he put in pledges to answer the matter; and if the appearance be had by attorney, then the Defendant so appearing, his Sureties must be bound by Recognizance with condition, that he shall render &c. if the Defendant in the Suit for whom they stand bound, be condemned, &c.

This Baile or Recognizance must be allwayes taken before a Baron in the court, and not in his Chamber, as in other courts most usuall. Except

Except the matter be of great moment, one Surely will be sufficient.

Where the Plaintiffe is pleased, the hand of the Detendant may bee sufficient, whether it bee a personall appearance, or by Attorney.

Here follows the Charge of the Subpoena, together with the appearance upon it in the Exchequer.

l.s.d

In primis, The Subpoena and Seale,	2-7
The appearance upon it,	0-8
The Recognizance,	0-8
The copy of the Information at eight pence the sheet,	
For entring the Baile if it be a generall Issue,	5-0
If in a special Issue for every halfe Rol,	16-4
To a Councellour for drawing the Plea in Bar,	10-0
For the Attornies fee,	3-4

Where there is an Inrolement made in the Exchequer, the Fees are as follow.

l.s.d.

To the Baron before whom the acknowledgement is made,	0-5-8
To	

The Compleat Attorney.

To the Master of the Office for his hand,
For every Roll,
For the Attornies fee,

*Where an under Sheriff is to pass
account in the exchequer, the charge
is as follows; some differences there
may be, as the account may lye, but
not much.*

F irst, for the tales upon payment of pro	1s.
fers,	0-1
For the entry of the same tales,	0-1
Where the Sheriff is dead, for the <i>Du</i>	
<i>clausit extremum</i> , whereby upon account, ex	
cution is to be returned,	13
For the Warrant of Attorney,	1
For the entry thereof,	0
For the Ushers fees, and the poore man	
box.	13
To the Countroller of the Pipe,	16
To him more, in regard of, &c.	3
To the Clerk to the Comptroller for fan	
mons in regard of,	5
To the Clerk of the pipe in prat of histe	
	1-0
To the L. Treasurers Remembrancer,	13
To the forraign Opposer for charging	
the green wax, and making the Scrow	
thereof,	1-6
To him for allowance of the wages of the	
Justice of the peace	13

To the Clerk of the Eſtreats for the portage of books, as you can agree.	
To the under Clerk of the Pipe for the like, in the manner.	
For the President for the forrain Account, in the manner.	
The fee in regard of the Juſtices of Aſſize for their dyet,	10 l.
To the Attorney for the entry thereof, and other Petitions.	2 l.
To the ſaid Attorney for his ordinary fee, for the whole year to receive the Writs and Precepts, &c.	1 l. 6 s. 8 d.
To him in regard of, &c. for every Term during the account, till finiſhed,	3 s. 4 d.
To his clerk in regard of, &c.	10 s.
The copy of the Sheriffs ſeizures, according to the number of them.	
The old Seizures, for each,	1 s.
The new Seizures, for each,	1 s.
To the clerk in regard of, &c.	3 s. 4 d.
To the Remembrancers Office, for each thereof, and for joyning the Tales of profeſſors,	3 s. 4 d.
On the Lord Treasuſers Remembrancers ſide for the like,	3 s. 4 d.
For allowance of the ſame Tales of payments of money in the Receit of the Exchequer,	1 s. 4 d.
For the joyning of the ſame,	
For allowance of the ſame,	1 s.
For every day that is given to the Sheriff, in reſpect of his Accounts,	6 s. 8 d.
For the entry thereof,	2 s.
To the Vſher for proclamation, when the Sheriff is ſaid to be caſt out of the court,	2 s. 6 d.
For the <i>Quierus eſt</i> , the making and allowing of the ſame,	1 l.

The compleat Attorney.

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For the Baron for his Fees, for the taking and allowing of the Foraign accounts, 6s. 8d.
To the same Baron for examining the Sheriffs Schedule, 6s. 8d.

The ordinary charge of passing another Account.

First, for the Delivery and receipt of three Certificates, 1 s.
For delivery of the Kings part of the Books of Extent to the Auditor, 6d.
To the Auditors man for a bag. 6d.
For a Warrant of Attorney. 8 d.
To the Teller for receiving of the money, and making a Bill thereof. 4 d.
To the Auditors man for allowing the Certificates. 1 s. 6d.
To the Auditors man for ingrossing the accounts. 4 s.
To the Barons man for receiving and allowing the Warrants of Attorney. 2 s.
For entring the accounts on the Kings Remembrancers side. 1 s.
For the like entry with M. 1 s.
For joyning of their two Tales. 8 d.
For the *Quietus est.* 3 s. 4d.
For entring of the *Quietus est.* 2 s.
For the Attornies fee. 3 s. 4d.

Thus much shall suffice to have spoken of the Exchequer, and of his Proceedings and Fees relating to Sheriffs.

In

In the next place take the fees of the Sheriffs themselves,
as in the Execution of their Office.

Inprimis, for the return of a *Nihil*, or *non est inven-*
tus, 4 d.

But in *Scire facias* they take 1 s.

For making a warrant upon ordinary Process, if
it be directed to the ordinary Bailiffs, then for every
name, 4 d.

In many Countries they take far more, in some
16 d. in some more.

If the warrant be directed to a special Bailif or
Bailiffs, then for every name, 2 s.

For the Arrest of every Defendant, 1 s.

This should be paid by the plaintiff.

For making the Bond of appearance, wherein the
Defendant with his Sureties is bound to appear in
Court, at the day of the return of the writ, 4 d.

They take 12 d. or more in some places.

For the return of a *Cepi corpus*, 4 d.

For the return of an exigent, 1 s.

For the return of a Proclamation, 1 s.

For the return of a *Venire facias*, 1 s.

They now take in most places, 2 s.

For the return of a *Habeas Corpus*, or *Distingas*,
2 s. 4 d.

For a Replevin, either in the County or other-
wise, 2 s.

For the return of a Recordare, 2 s.

For the return of an *Accedas ad curiam*, 2 s.

For the return of a *Distingas nuper vice comitatē*, 2 s.

For the allowance of a Superseedeas, if it be after
the return of the Exigent, 1 s.

They pay more now in many Counties.

For the executing of a Writ of inquiry of waste,

For the executing of a Writ of inquiry of damages in *Trespas*.

Trespas upon the case, &c.

For the executing of a *Liberato* upon a statute of Recognizance.

For the execution of an *Habere facias possessionem*, or *seisinam* upon an *Ejectione firme*, a writ of right, of making partition, &c. of Dower, &c.

As you can make agreement with the Sherif.

For the executing of an *Elegit*, and for the inquiry upon it.

For the executing of a Writ of forcible entry, or holding with force, whereupon the party moved, is to be restored by the Sherif to his possession.

For the executing of a writ of Inquiry upon assault and battery.

Vpon a *Rescous*, and many other too long here to insert. The like as before.

For the returning of a *Mandavi Ballivo Libertatis*, &c.

4 d.

Vpon the serving of an Execution for money, either debt or damages.

The Sherif hath poundage allowed him, and is a general rule allowed by a Statute in Queen *Elizabeths* time, see the Statute what it is.

There are many other fees incident to the Sherifs in many Actions, and otherwise, which in respect the Actions themselves are most of them out of use, are not so well known; and indeed a man had need be well-experienced in the Office of an under-Sherif, to know both what fees he ought to receive, and what he ought in the Exchequer to pay.

The

The Court of Upper-Bench comes next to be treated of, wherein we shall be the briefer, in respect that many actions treated of at large before, in the Court of common-Bench, are here also brought, and all the differences of their proceedings, is for the most part matter of form.

THE Court of upper-Bench consists of a chief Justice, and three other Judges.

The subordinate Officers are as follow.

The chief clerk of the court, or Master of the upper-Bench Office, whose place is executed by his Secondary for the most part, or his clerks under him, who write all pleadings and Declarations, and other proceedings upon Record, and are accountable to him for the same.

His Deputy also signs all *Latitats*, which is the first writ whereby a Suit is commenced: And writs of *Alias*, *Plures*, *Capias*, *Eligits*, *Habeas corpus*, *Procedendo*, *Habere facias possessionem*, *Certiorare*, *Distringas*, *Ballivo*, *Distringas* against late Sheriffs, *Returno Habendo*, *Capias in Withernam*, second Deliverance, and some others. He also keeps the remembrances of all Records, whereby you may finde out any Record with little trouble, especially if you know the Term when it was entred, and the Attornies name: and also all writs returned, and *Posseas*, and writs of Error, are kept and filed in his Office, and also common bails, and especial bails, after they are excepted of by the Plaintiff or his Attorney, are likewise filed and entred upon Record in his Office.

Secondly, The *Custos breviarum*, his office is to file

all original Writs, and other Writs, wherein you proceed against any person you intend to outlaw. And also makes up all Records of *Nisi prius* for trials at the assises in the severall countries, and hath severall Clerks under him, who write the same; but many times the Plaintiffs Attorney, or the Defendants Attorney, if you go to trial by Proviso, write the same, that he may dispatch the Clients business the sooner, for which you pay for every press, which is to contain sixty lines, 6 s. 6 d.

The secondary to the chief Clerk, he always attends the sitting of the Court, for to examine business, which is referred to him by the Judges; and afterwards makes his report thereof, how the case stands: He also signs all Judgements and Taxes, Costs thereupon, and gives all rules to answer and reply, and to go to trial by Proviso, and many other; and usually resolves all doubts and questions of the other Clerks: And if any difference arise between any of the Clerks for matter of practice, it is usual with them that are fair Practicers, to refer the same to him for to determine, and not to trouble the Court with unnecessary motions, and expend their Clyents money in vain, which may that way be saved.

The Clerk of the Papers, his Office is to make up all special pleadings and Demurrers, which the Plaintiffs Attorney most commonly speaks for; and afterwards by vertue of his Office gives a Rule upon the side of the paper-book, for the Defendants Attorney to bring the same to him again, to be entred within four days, or else judgement to go by default.

Keeper of the files of Declarations, with whom after they are ingrossed in Parchment, and continued on the back, from the Term you declare, till it come to an issue are filed.

Keeper

Keeper of the Sign and Seal for the Bills of *Middlesex*, who keeps a Book, containing the *Plaintiffs* and *Defendants* names, and where you may search for any appearance, or for any Writ that is taken forth.

The Clerk of the Rules, whose Office is to attend the Court, and take short notes of all rules and orders that are made in Court (except those which belong to the Crown Office, and afterwards draws the same up, and enters them in a Book at large, for which you pay 8 d. and for the copy of every Rule 4 d. if it be of the same *Term*, otherwise you pay 8 d. He also files all Affidavits that are used in Court, and hath the benefit of making copies of them, for which you pay for each sheet 4 d. and with him you are to give all rules of course, as rules upon *Cepi corpus*, *Habeas corpus*, for a *Procedendo* *posseas*, Writs of inquiry, and such like.

Phillizers, one for each county in *England*, who make out all writs, wherein you intend to proceed by original, and so to the Outlawry (except the original it self which you are to bespeak of the Curfitor of the County, where you intend to lay your Action, in such manner as you bespeak Originals which are made in the Common Pleas. And they have the benefit of all Writs and Entries thereupon, and allow the chief Clerk nothing for the same.

The Marshal of the upper-Bench, who hath the custody of all Prisoners, who are sued in the Court, like to the Guardian or Warden of the Fleet, which is a Prison properly belonging to the common Bench & Chancery; and every one that is sued and arrested in this Court of upper-Bench, is supposed to be in custody, for you cannot declare against any man who is arrested upon mean procees, in any county or city, and he remain in Prison there, for

want of bail, until he be removed by a *Habeas corpus*; and always either he himself, or his Deputy, or servants, attend the Court for that purpose, to take Prisoners who are committed to their custody.

Clerk of the Errors, he allows all writs of Error, and makes a *Superfedi*as thereupon, into what county you please to have them.

Cryers, who always attend upon the Court, either to call Non-suits, give Oaths to witnesses, and Jury-men of tryals, or to any others whom the Judge shall direct, and at the end of every Term they do adjourn the Court.

Porter, who is to bring the Records out of the Office, when they are to be used in Court.

This court of upper-Bench holds plea in all Actions of Debt, Detinue, Covenant, Account, and all Actions of the case, either upon promises, or for scandalous words, or for special nuisance, &c. Trover, and Conversion, and many other like, &c.

The course of Proceeding there is by way of Latitat, as their first process, if the Action to be brought or the party to be arrested in any other county then *Middlesex*.

If in *Middlesex*, then you take out a Bill of *Middlesex*, with any Clerk of this Office, for which you pay 1 s. 6 d. and then you are to carry it to the under Sherif of *Middlesex* his Office, who is to make out a Warrant upon it, for which he hath 4 d. and then you imploy what Bailif you think fit for the Arrest, except your warrant be directed to the Bailif of any particular Liberty, and then you are to imploy one of his Bailifs.

If it be a Latitat, it supposeth a Bill of *Middlesex*, & that the party cannot be found in the county of *Middlesex*, as it appears by the later end of the writ, where it is said, the Sherif of *Middlesex* returns, that

that he is not found within his *Bayliwick*, but that he lies hidden in another county, and therefore command is given to that Sheriff of that other county that he take him, &c.

This Writ or *Bill* of *Middlesex*, I conceive is in the nature of the Original in the Common-Pleas, which warrants the *Capias*, and happily may have very anciently been in use for that purpose, for that otherwise 'twere vain to insert those words of the Sheriff of *Middlesex*.

The form of a Latitat is as follows.

Latitat,

THe Keepers of the Liberty of *England* by authority of Parliament, to the Sheriff of *E.* greeting. Whereas we have lately commanded the Sheriff of the county of *Middlesex*, that he should take *A. B.* if he might be found in his *Bailiwick*, and him safely keep, so that he might have his body before us in the upper-Bench at *Westminst.* the Thursday next after 15 days of Easter, to answer *C. D.* in a plea of *Trespas*: And the said Sheriff of *Middlesex*, at that day returned unto us, that the said *A. B.* is not found in his *Bailiwick*; whereupon on the behalf of the aforesaid *C. D.* in the court before us, it is sufficiently testified, that the said *A. B.* doth lurk and sculk in your county; therefore we command you that you take him, if he shall be found within your *Bailiwick*, and him safely keep, so that you may have his body before us in the Upper-Bench at *Westminst.* on Wednesday next after three weeks of Easter, to answer the said *C. D.* in the plea aforesaid, and that you have there then this Writ; Witness *H. Rolle* at *Westminster*, the seventeenth day of *April*, in the year of our Lord God, 1651.

Th

This Writ is usually 4 s. 1 d. some take 5 s. 1 d.
And if you cannot arrest the party upon this, the
you may have it renewed as followeth.

Alias Capias.

THe Keepers, &c. To the Sheriff of L. greeting
We command you, as formerly we commanded
you, That you take A. B. if he shall be found
within your Bailiwick, and him safely keep, so that
you may have his body before us in the Upper
Bench at Westmin. on Saturday next after the mor-
row of the Ascension of our Lord, to answer C. D.
in a Plea of Trespas. And that you have there the
this writ; witness *H. Rolle at Westm. &c. Wightwick.*

This Writ is xlii d. but they usually take
2s. 1d.

The Plures Capias.

THe Keepers, &c. To the Sheriff, &c. We com-
mand you, as many times we have commanded
you, that you take A. B. &c. as in the Writ next
before.

This writ is likewise xlii d. but they take 2s. 1d.

Bill of Middlesex.

Middlesex, ss. It is commanded to the Sheriff
that he take A. B. if &c. and him safely,
&c. So that he have his body before the Keepers
of the Liberty of *England* by authority of Parlia-
ment, in the Upper Bench at *Westminster*, on Wed-
nesday next after the month of Easter, to answer
C. D. of a Plea of Trespas. And that he have here-
then this Precept, &c. by Bill *Wightwick.*

These writs you may have renewed every Term,
until

til you get the party to be arrested. But if the *Latus* remain unrenewed for five Terms, after you have taken it out, then you must have a *Latus de novo*, for that you cannot renew the old.

Vpon any of these Processes, if any of the parties be arrested, dwell within a Liberty, you must get the Sheriff to return a *Mandabo Ballivo* to your process, and upon that the course is to have a *Non est*, for which you pay 2 s. 4 d.

Where upon this, or any the other writs, the party or parties be arrested, and have put in bond for his appearance to the Sheriff, you must pay the Sheriff 4 d. and he will return you a *Cepi Corpus*, upon which, if the party do not appear at the return of the writ, you may give the Sheriff a rule to bring in the body, on pain of 40 s. &c. which costs 4 d. and when he do not come in & appear, you may have a *Habeas Corpus*, upon the *Cepi Corpus*, which costs 4 d. If the Sheriff will not return this writ of *Habeas*, you may amerce him as before; if he doth return the writ, and brings not in the body, he can return nothing but a *Languidus in persona*, and upon that you may have a *Duces tecum licet languidus*, &c. upon the like price; or else after the party is arrested, you may have a *Habeas Corpus*.

At the return of all or any of these, you may amerce the Sheriff, and he shall pay it after those rules given in the upper-Bench.

If you will extreat your amerciaments into the Crown Office, the charge of every rule extreated is 2 s. 4 d. unextreated 4 d. And in this course you may both amerce the Sheriff, & prosecute till such time as he doth appear; but if there be any great Amerciament, the Defendant will appear, for fear the Sheriff sue his Bond: And after the Amerciaments are returned into the Crown-Office, if they be

be not certified and returned into the Exchequer which is once in every half year, where they extreated before that time, if you be sued upon the Sheriffs bond, you may upon motion of the Court if the Plaintiffs Attorney (to whose Client the Sheriffs bond is commonly assigned) will not consent otherwise, that you are content to appear, as of the same Term, the first Writ was returnable; and accept of a Declaration, & not to delay the Plaintiff in his suit: the Court will usually order the Suit upon the Sheriffs bond to stay, or if the Amerciaments be extreated, then upon the same offer and also to take of those Amerciaments, the Court will order the like.

And when any one intends to appear, he must file a Baile with the Master of the Office, fairly writted in Parchment, the form whereof is as follows.

If it be a common Bail thus.

A. B. C. in the County of D. Yeoman, delivered into a Bail upon a *Cepi corpus*.

To John Doe of London, Yeoman, and Richard Roe of the same, Yeoman, at the Suit of E. F.

If special Bail upon a *Habeas Corpus*, to such persons, naming his Baile (instead of John Doe, and Richard Roe) at the Suit of the Plaintiff, in the complaint not naming the Defendant, as in the common Bail, which must also be filed with the Master of the Office.

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in what cases you are to require, and may stand upon good Bail.

the Defendant do appear, and he stand indebted to your Client, either by Bond, Bill, or otherwise, to the value of 20 l. or 10 l. you may force him to be in good Bail, if you mistrust his sufficiency. If it be in any action of the Case, for words, though the party be nothing worth, and you are ready to recover great damages, yet can you very easily hold him to good Bail: yet in some cases it has been observed, that good bail was required, as where one had made a Libel against another, who was a Magistrate.

In any Action of *Ejectione firme*, and in Action of Trespass, good Bail is not insisted on, nor required except in some special cases, then the Court will order that there be special Bail.

Nor is there good Bail required against Executors or Administrators, in any action brought against them; unless in such case where you can directly prove they have wasted the Goods of the Testator.

If Bail be put in, either common or special, at another mans Suit, a stranger may upon this Bail make a Declaration, but then he must declare of the same Term the Bail was put in, which is not usual in the common Bench. But the party at whose instance the Defendant was arrested, may declare the same Term after the Defendants appearance upon the Bail.

But if it be especial bail that be put in, no stranger shall take the benefit of it, although he declare of the same Term.

If the Defendant appear in his proper person, you

you must declare within three days, otherwise will have costs.

If you have declared and do not call for answer nor enter the Action within three Terms, after appearance of the Defendant, the Plaintiff shall be Non-suited, and the Defendant shall have costs.

And if you arrest one in the County, upon mesne process, and he is in the Sheriffs custody there want of Bail, for the space of three Terms, and you do not remove him into the custody of the Marshalsea where he must be, before you can declare against him, the party arrested may have a Superseas, and file common Bail.

The Declarations are usually drawn by the Clerks of the Office, for they that are Clerks of the Office are to do the business of those which are Attornies at large, & their names are only used as Attornies but those Clerks are in right of their being Clerks of the Office, Attornies of the Court.

Their manner of practice is something different, in respect of the delivery of Declarations, from that in the common Bench.

In the Common Bench, the Plaintiffs Attornies or Clerk, hath the benefit of both the copies of the Declaration, both on the part of the Plaintiff and Defendant,

But in the Vpper Bench, the Declaration being drawn by the plaintiffs Clerk, the defendants Clerk calleth for it, or else it is delivered unto him, and he maketh a Copy of it, and hath the benefit of it, and then the next Term after, or so soon as the plaintiffs Clerk calleth for answer, is to plead or confess the Action, or let it go by default, &c.

Their Declarations that are drawn, they ingross severally in pieces of parchment, and upon the back of them they enter their continuances, from the Term

zers Office; in which cases, or in trespass, or in the pass of Assault and Battery, if a man be outlawed in that Court, he is half undone, if he be a poor man; for besides that it costs him 6 l. 13 s. 4 d. upwards, to reverse the outlawry, he must, although he live 200. or 150 miles distant from London, come in person (if he be able) to reverse it, and besides must procure good Bail; and in case he be impotent that he cannot travel, then there must be Affidavit made thereof before a Judge, which done, he may reverse it.

One may proceed to Outlawry in this Court as well as in the Common Pleas, in all cases, except in these four.

1. Debt. 2. Detinue. 3. Covenant. 4. Account; but it is seldom made use of but upon good occasions; that is to say, When the Defendant hath a good personal Estate in Debts, Cattel, or Stock in his Grounds, and is hard to be taken and arrested for otherwise Outlawries are but meer scare-crowes to disable both the Pleintiff and Defendant, in putting them to unnecessary charge, whereas upon a Latitat you may procure a man to be arrested presently, and make him put in good Bail, which is all you can do upon an Outlawry, after three Terms space: And besides upon a Latitat you may declare against the Defendant, in as many Actions as you please; whereas in the Common-Pleas, you must have for every Action one Original; and if it be a Debt which exceeds 40 l. you must pay as before is told you, 6 s. 8 d. fine, and if 110 l. you pay 10 s. fine, and so proportionably; and as soon as you bespeak your original, before you have any benefit of your Suit, whereas no fine is paid at all in the upper-Bench, and in the upper-Bench the Pleintiff hath longer time to declare, then is allowed in the common

common Pleas (if the Defendant do not appear in person) and then you must declare within three daies after.

When the Plaintiff and Defendant are at issue, the Defendants clerk hath the benefit (as before of making the Declaration) so of making the copy of the issue for the Defendant, which is otherwise used in the common Bench.

If there be special pleadings in any action by the Plaintiff or Defendant, which either comes to issue, or that there be a demurrer, then they carry the whole Book to the clerk of the Papers, who giveth a Rule to the Defendant in the margent of the Book, to joyn in issue or in demurrer, and he maketh up the Books and is paid 8 d. a sheet for the same, which is otherwise in the common Pleas, for there the Plaintiffs Attorney hath that benefit.

The Clerks of the Office are to account with the Master of the Office, after the end of every Term, for all Writs or Entries, &c. which they have had of that Term so proceeding.

After Verdicts, and that they have the Posseas returned, and that the Master of the Office hath signed costs (which he doth as he doth all other business by his Secondary) then they enter up their Judgements, every clerk his own, and so he makes out his Executions either against the body, which is commonly called a *capias ad satisfaciend.* or else against the goods, which is commonly called a *Fieri facias*, or else against the Lands and Goods which is called an *Elegit*, but if you once charge the body in Execution, you have no remedy against the Goods or Lands.

If it be an issue of any former Term, that is entered upon the Roll, or of the same Term, then if they wil have a Record of *Nisi prius*, they must have

it made by the *custos Brevium* of that court who keepeth pericular clerks for that purpose, for they are to pay him for them, although for expedition the Attorney or clerk most usually makes them himselfe, and then the *custos Brevium* seals them,

This court of Upper-Bench holdeth Pleas of the crowne, and to that purpose there is an Office called the crown Office, and the Master of it called the clerke of the crown; and here may be brought Inditments for all manner of Treasons, Murther, Felony, Breaches of the Peace by Battery, &c. Breach of the good behaviour, for perjury, all publick nufances appeales in case of Murther may come, and here likewise Informations upon penall Statutes are brought, and here issues out *Certiorares*, to remove Inditments from private Sessions, and hither are all convicts certified.

They have belonging to this Office a Secondary, who sits in Court, and takes notice of what Rules are made on the Crown side. They have likewise severall Attorneys of that Office, who have the businesse of the Country, as to that Office divided amongst them, who intermeddle not with any thing relating to this court, other then in their own Office.

How to sue upon a Statute Staple.

IF you would sue forth Execution upon a Statute Staple, go to the Clerk of the Statutes, and shew him your Statute, and he will make you thereupon a Certificate, which being made and sealed by him, carry it to the clerk of the crowne, (which is the Office, whence all Patents speciall issue forth) and upon the delivery of the Certificate to him, he is to make you your Extent, which you must after deliver unto

unto the Sheriff of the County where the Land lieth, who will by vertue thereof impannell a Jury to inquire and extend Lands, Goods, and Chattels of the Cognizer, and may by vertue thereof apprehend the body, if, &c. The Lands being thus extended into the Kings hands, the Sheriff may keep untill you bring your Deliberate, which you are to have (upon your extent returned) from one of the Clerks of the Petty bag; but it behoverh you to be very carefull how you sue forth of your Liberate, and that you do it not before you have fully informed your self what Lands or Goods there are in any other county, that you may extend, whereby fully to satisfie your Statute, for if you once execute your Liberate, upon that which was first extended; you shall never have execution of more, although you make an after discovery: And you are to deliver your Statute into the petty bag Office, before they will make you your Liberate.

How to sue upon a recognizance acknowledged before one of the Masters of the chancery.

WHERE you will sue upon a Recognizance, you must bring it to one of the clerks of the Petty-bag Office in chancery, and he will make you out two *Setre faicas*, directed to the Sheriff of Middlesex.

The first returnable of a return past, and the other bearing *Teste* of the return of the former; and returnable at the day to come, which you must get the Sheriff of Middlesex to return, and having them returned, you are to bring them back to the clerk of the

Petty bag Office, and then retain one of the clerk, for you, and give the Defendant day to appear.

At which day if he appear, the Plaintiff is to declare, and the Defendant is to answer, and so proceed to issue, and upon the issue joyned, you may have the whole proceedings ingrossed, in parchment, and by Mittimus sent into the Upper-Bench or common Pleas, or else the Lord Keeper, or Lords commissioners for the great Seal, for the time being, may deliver it so ingrossed into either court without Mittimus, which is said to be delivered, *Propria sua manu*, where the issue shall be tryed, and Judgment given, for in the chancery no issue can be tried but if the Defendant appear not, you shall have execution by default which course is indeed most usual.

*How to prove a will in case the party
be present, the Inventory not
exceeding forty
pounds.*

First you are to bring in your Will, under the hand of the Testator and Witnesses names, and take oath, that that is the last Will for ought you know, and in case the party live in the Countrey, there must a commission issue forth to that purpose, which being returned, you must retain a proctor, and he will sue it out for you, the charge follows, but is alterable according to the length or shortness of the Will.

	<i>l. s. d.</i>
In primis, for registering of the will,	1. 0.
For ingrossing the will,	6. 0.
For the Register, for his hand to the same,	12. 0.
	<i>For</i>

For the Seal and probate of the wil,

6 s.

The Proctors fee and the prox.

4 s.

For proving the Will.

For ingrossing the Inventory,
and exhibiting the same,

} according as
you can agree

These fees should be far lesse, could the Registers
Clerks be confined to walk by what the Statute di-
rects, and in some very short wills they are lesse then
what is above set down.

The Dutchy Court.

THis court before the Seal formerly made, and
the large grants of the Dutchy Lands, was much
used in relation to suits between the Tenants of
those Lands, and also against accountants and others
for the Rents and Profits of the Lands, and is a court
of Record, wherein are Pleas both reall and per-
sonall, as also mixt pleadings, relating to the dut-
chy Lands.

The chancellor of the Dutchy is the chief Judge
of this court, and the next to him the Attorney of the
said court, who in all difficult cases in point of Law
is usually assisted by two Judges of the common Law
out of one court or other, to decide the matter or
question in Law.

There is one chief Clerk or Register of the court,
to whose office it properly belongs to have the Keep-
ing of all the Rolls and Records of the court, and al-
so of the proceeding therein.

There are divers auditors of this court, of which
there are two more especiall then the rest, The one,
whereof his Office extends to all the Dutchy Lands
on this side Trent; and the other for the Lands be-
yond Trent. To those Auditors doth belong the keep-

ping of the Kings Evidences, as Leases and Grants of the Dutchy Land, aswell of the possessions and copyhold as Fee-simple, and Fee farm.

Although there be divers Surveyors for the Dutchy Lands, for the surveying of it, yet do they not keep any Record to that purpose, unlesse som short draughts of their own framing.

Thus much for courts of Record at Westminster, which are for the Common-Law practise; come we now to the court of equity, which in many cases abates of the rigor and severity of the common Law and is called,

The High court of chancery.

IN this court the Lord Chancellor or Lord Keeper of the great Seale, were formerly, and now the commissioners of the great Seale are the chiefe Judges, and in this court, they, and in their absence, the Master of the Rolls, doe make Orders and Decrees.

The subordinate Officers of this court are many.

The twelve Masters in Ordinary, which are assistants of the commissioners, and sit with them, and to whom references are made, and before whom Affidavits are made and deeds acknowledged, and Recognizances, &c.

The Register of the court who hath divers under him that sit in court and take notice of all Orders, Decrees made in court, and accordingly, afterwards draw up these orders and enter them, and file them.

The six clerks in whose Office all proceedings upon Bill, and answer unto the very Decree, and after Decree are acted, and from whom likewise issue some Patents

Patents; as for pardon of men for chance-meddley, Patents for Embassadors, commissions for Bankrupts; and these by their clerks, of which each six clerks keeps a set number.

The cursitors of the court, who were incorporated by Queen *Elizabeth*, by the name of the four and twenty cursitors, amongst whom the businesse, that lies in the severall Shires, is severally distributed. These make all Originall Writs in the chancery, which are returnable in the common Pleas, and all Writs of Entry and covenants.

The Register is a place of great note in this court and hath severall Registers under him, who sit in court by their turnes, and take notice of all Orders and Decrees made in court, and accordingly draw up the orders to which you must have a Registers hand, and then you must enter it there, and in that Office likewise they file the Reports of the Masters.

The Masters of the Subpena Office. The clerk of the Affidavits, where you file such Affidavits as you use in court.

The clerks of the Petty Bag, who have many clerks under them, and these clerks have much variety of business that comes through their hands, and requires very much knowledge and experience for the managing of.

This Office hath the making out of all Writs of Summons to the Parliament.

To this Office are all Offices that are found *Post mortem* brought to be filed.

In this Office are all pleadings of the chancery, concerning the validity of any Patent or other thing what soever that passeth the great Seal.

And these pleadings were formerly in Latine, although most of the rest of their proceeds were in English.

If any question arise about the acknowledgement of any private Deed between Subjects, which is acknowledged in Chancery, before the Lord Keeper the Master of the Rolls, or any of the Masters in Chancery.

All Statutes and Recognizances taken before any Officers of this court, to that purpose deputed, are here procured and transmitted hither.

In these Offices are all Suits for or against any person priviledged in the court.

It is likewise a hand whereby to transmit diverse things, from the riding Clerk, and the Inrolment Office, to chappell of the rolls.

The Examiners are Officers of this Court, who take the depositions of Witnesses, and are to examine them, and to make our copies of the Depositions.

There are likewise clerks of the Rolls, who sit constantly in the Rolls to make searches for Deeds, Offices, &c. and to make our copies.

The Usher of the court, who hath the receiving and custody of all Moneys, ordered to be deposited in court, and payeth it back againe by order.

The Serjeant at Armes, who carrieth the Mace before the commissioners, and to whom any persons standing in contempt, are brought up by his Substitutes as prisoners.

The Warden of the fleet attends likewise this court, to receive such prisoners as stand committed by this court.

This court consists of a double power, ordinary, as in the cases of [Scire facias] to repeal Patents in cases of traverse, Endowment of a woman, and the like, and here in the court is limited, and confined to the Rules used in the common Law.

The other is extraordinary and unlimited which in cases of equity, wherein reliefe is to be had by a Suit,

Suit, hereby way of Bill and answer.

By the power of this court, are issued forth commissions for charitable uses, Bankrupts, and Sewers. Herein this court in some cases, commissions have been granted to examine waists, to set out meet ways for passages; to prove a child legitimate, to prove customs, and to examine Witnesses, in *perpetuam rememoriam*.

It proceeds by way of Bill and answer, in many cases this court will give relief against, besides and beyond the rules of the common Law, some whereof follow. As where a charge lies upon one man alone, by the common Law, where in equity others ought to contribute a part to this charge, herein this case the court will give relief.

So likewise will the court relieve one against another who had falsified and broken his trust with him.

It gives relief against the extremity of an engagement, where either the engagement is without any consideration unreasonable, dishonest, or discharged; or where there hath been either fraud, force, or the like used to procure the thing to be done.

Where by a Law a man cannot be compelled to perform an agreement, this enforces it.

It enforces the inrolment of a Deed if need be.

This court will restrain other courts that take upon them a greater Jurisdiction then properly they have, and removes the Suit into this court which is done by *Certiorare*.

This court will reduce the generall customes of a Mannor to certainty between the Lord and Tenants, or the tenants themselves.

It serves to recover Land for money given to charitable pious uses, and misemployed.

The Compleat Attorney.

It inforces the Husband to give his Wife money.

Where Creditors are unreasonable this court forceth them to take a reasonable composition of D. b. or he being disabled.

Where Fee hold, or copy-hold Land are forfeited, it well distinguish it, or if it be lost it will give recompence for it.

This court will ascertain the Fines of copyholders.

This court (where Executors or others have money in their hands, there to lye long) inforces them to give security, or interest for it.

This court will inforce the Recovery of a Legacy or force the performance of a will.

It serves for the recovery of ones Land, Debt, Duty, although he have lost the conveyances or Writings, by which he should make his Title to it, otherwise be without remedy for it.

It inforces he that hath sold Land, and taken money for it, assured by defective conveyance, to make the same perfect and good.

It will inforce a Tenant to attorn, to perfect Assurance.

In these and such like cases this court of chancery doth allwayes, or for the most part, give relief as you may see more at large in *Tothills* and *Carries Reports*.

In some other speciall cases likewise this court doth exercise a power, as to prevent the disinheri- tance of an Heire, or restore it.

To avoid the extinguishment or suspension of rent or common.

To prevent an occupancy.

To avoid the bar of an action, by the Statute of *Jacobi* of Limitations.

will order the inclosure of Grounds or Lands
are common, give reliefe against the turning of
Watercourse from a Mill, so as there be any speciall
circumstance in the case, or herwise it is very thin and
order in making orders in them.

But regularly this court doth not give relief where
substance of the Suit by Bill and answer tends to
the overthrow of an Act of Parliament, made for
public peace and repose, or to the overthrowing any
fundamentall point of the common Law, or to o-
verthrow and take from other courts their peculiar
jurisdiction, or the like.

In all such cases wherein the Plaintiff hath his re-
medy at common Law for the very same things, he
shall not be relieved here.

Where a promise is made to assure Land for a cer-
tain sum of money, in this case the party may either
sue at Law for damages, or in Chancery for the land
itselfe.

The like case for a Nuisance, where the Law gives
damages, I may sue here to have the Nuisance re-
moved, or the thing it selfe restored: And yet there
may be some speciall circumstances in the case, which
may make the court retain it, as where a Suit is
grounded upon a will Nuncupative, Lease paroll,
or long Lease, to avoid Wardship, or to establish
petuities, or to defeat Purchasers, or for Broke-
age or rewards to make marriages, or for bargains
or play, or wagers, for bargains or Offices against
the Statute of 2 Edward the sixth, or upon contracts
for Usury or Symony, or if it be for Land not worth
twenty shillings a yeare, or for any thing else under
the value of ten pounds, those are regularly disallow-
ed here: And sometimes upon notice taken hereof
by the court, upon motion as upon Affidavit onely,
before the cause comes to hearing it is dismissed, but
is

if it stay longer till it comes to hearing, it is dismissed; yet there are some circumstances may make some of these retainable, as were the for so small a matter be for the poor of a parish, the like.

In such like cases as these the matter being heard upon Bill and answer, and the proofs of Witnesses the Court may (without any regard to form or pleading, so as the truth, *Viis & modis* may be discovered) proceed to sentence it according to equity and good conscience.

All persons able in Law to sue or be sued, may in this Court sue or be sued.

Reliefe may be and is often given against or for an Infant in this Court, touching which matter the things are to be known.

As to suits against an Infant.

First, An Infant hath been compelled to answer a bill in this court, as in Hares case, Hil. 3 Ja. 1. Mores case, 11 Caroli, Tothil 108. 109. And being but twelve years old was bound by a Decree of the court 37 Eliz. Wadhams case, and upon a review decreed againe, Cromwels case, Mich. 7. Caroli, and was committed to the Fleet for disobeying a Decree, 4 Eliz. Tothil. 108. 139.

Secondly, This Court may also if it please, appoint an Infant Defendant, a Guardian to defend the suit Caries Reports 38.

Thirdly, A copihold was surrendered to the use of an Infant for the Infant to pay an annuity to another at his full age, which he refused, it was decreed he should pay it, and the arrears thereof, Sawyers case. 4 Eliz. Tothil. 107.

Fourthly, Young purchased Lands in the name

son, in trust for himselfe and his Heirs, and dies
declaring any determination of his trust, pro-
Mason to convey it to him being of kin; he
says it to Infants, C. sues here as next Heir, the
agrees, that if the benefit of the trust did be-
to C. that it shall be decreed to him, during the
ority, and then that the Infants shall convey it;
Karies Reports, 30.

Sixtly, a Mother conveyed her Lease to her Son
trust, and after the Son conveyed it to his children
ants, and it was decreed against the Father and
dren, because done without any consideration,
hil. 98.

Sixtly, Between the date and sealing of the con-
ance of Land sold, the Lord Morley passed it to
Infant, and it was decreed against the Infant and
both, 36 Eliz. Lady Russels case.

Seventhly, the Father being tenant in taile, sels
intailed Land, and leaves as much Free-Land to
scend to an Infant, the court ordered when he
comes to age to pay the money given for the Land
Ja. according to the Fathers Will, or else that the pur-
d buyer shall have the Free-Land, 7th hil, 184.

Eightly; An Infant may by this court be com-
to give a discharge of money due to, and received
him, as in Rayners case, 13 Caroli.

Ninthly, where one made an Infant Executor to
prevent the payment of his debts, and he was ordered
the court to pay them notwithstanding, Mich. 9 Ja-
end. Tothil. 108.

Tenthly, An infant may in some speciall cases by
his court be concluded by his agreement.

But regulary, if an infant be twenty yeers of age,
and make a contract never so much to his advan-
age, the court will not conclude him, nor will the
court decree against him by his consent, or the con-
sent

sent of his Parents, but in some speciall cases upon Merit of the cause, Mich 8. Caroli in Chancery.

A Father being about to convey some of his to his yonger son, and the Eldest son promised give the yongest son an hundred pounds, if the Father would forbear it; in this case the Eldest son being an Infant, was ordered to stand to it, See Stiles, case. 2 Caroli Toth. 95.

Eleventhly, A Surrender was made of a Chancery hold by an Infant, to the use of J.S. for money paid, and no help could be had here, Hughes case. Toth. 180.

Twelfthly, if I take bonds for my money in childrens name that are Infants, I may release Debts, and this court will allow it, and forbid a suit upon them.

As to suits by, or for an Infant.

First, he shall have the same reliefe upon a breach of trust, fraud, or the like in this Court as another Man may have, notwithstanding his Minority, Toth. 108.

Secondly, he may sue by himselfe or his procheamy or Guardian, as the Court will order.

Reliefe is often given by this Cour against, or for a woman under Covert Baron, touching which, the things following are to be known.

As to suits against her.

1. She shall be compelled to answer with, or without her husband, See Caries Reports, 100. 131. Tothil. 95. and 96. But more especially, if he be out

the Land. And shee shall be bound by the Decree
of this court, as in *VVestdeans case*, *Tothil 39* and she
shall be committed till she do obey it, as in *Seywards*

2. The Husband and Wife were ordered to levy a
fine, and perfect assurances, *Tothil 93*.

3. The Husband was ordered to give security,
that the Wife should release her right to Land. See
Tothil 92.

4. An Agreement in some cases will here be or-
dered to conclude her where the merit of the cause
requireth it: As if a man have two Tenements of
the Wives Land, and they agree with the Tenant,
that if he will surrender the one, he shall have three
times in the other, and he doth so, and the Husband
and the wife was ordered to make it good. See *Ire-*
lands case, *37 Eliz Tothil 91*. But regularly it is other,
and therefore where shee hath Land with other
heirs, and she with the consent of her Husband,
agree to take a thousand pounds, to release her
right, the Judges did certifie she was not to bee
concluded, *Trin 7. Jacobi Dockwraies case*, *Tothi. 98*.
5. In *10 Jacobi Randals case* was, that a single wo-
man did agree and after her Marriage subscribed her
name with her Husband to a latter agreement, and
was concluded by this latter, by the courts order, *To-*
thil 96.

6. But in *Slaters case*, *37 Eliz. Tothil 92*. she and her
husband did article to forgo her Joynture, for o-
ther recompence, and a decree was made thereupon
(without her consent) in her Husbands lifetime.
And after his death, the court will not hinder her to
make agreement.

7. A Lease of Land was made to friends, to her
husband, to begin after her Husbands death, and they
did levy a Fine of the Lands, this will not bar them
in

in equity, *Trin. 15. Caroli Listers case.*

A. made over his Lease for years, to the use of his wife, after he and his Wife sold the Land, and levied a Fine of it to D. the Court ordered that the Purchaser should enjoy the Land against the wife, after her Husbands death, 2 *Caroli.*

One was seised of Land to the use of a feme sole who after took a Husband, and the Husband sold the Land, the Wife had the money, and she and her Husband desired the Feoffee in trust to convey it, and he doth so, yet it seems the court of chancery will not bar her of the land after her Husbands death.

The court ordered the Husband and Wife to levy a Fine of morgaged Lands, settled in her; the *Lady Griffins case*, 4 *Caroli.*

One did convey Land to the Husband in trust and he took the Profit and left it with his wife, and she married again; they two were used in this court, and yet neither as Executor nor Administrator to her first Husband, as in *Acklands case*, *Tothil*, 106.

As to suits by and for her.

In some cases she may sue her Husband, as for Alimony or maintenance, where they be parted, but ordinarily she may not sue her Husband, or her Husband sue her, *Symphons case*, *Tothil* 64 97.

Secondly, she hath been allowed to sue without her Husband, and without her privity, especially he being beyond the Sea, *Tothil* 95.

The Woman and her Husband agreeing to part upon difference, and he giving her a sum of money for her livelyhood, which was put into a friends hands for her, shee was allowed to sue alone for this without her Husband, *Caries Reports*, 87.

Thirdly, she was admitted to sue here for a dury released by her Husband, gone beyond Sea, as in *Farewells*.

remells case 32 *Eliz.* & *Barkers* case 5 *Caroli* Tot-
 95. as for her Jewels, the Earl of *Derbies* case. To-
 95. And yet the having Goods she pretended to
 her Paraphronalia, the Husband devised them, &
 was here allowed to be good, and she remediless,
 in *Davenport's* case 5. *Caroli*.

Fourthly, if a woman had goods at the Marriage,
 and the husband doth use & dispose them all his life
 time, and then giveth them away, or maketh an Ex-
 ecutor: this Court it seems will give her no reliefe,
 be it the Husband leave never so great an estate be-
 lieves, unlesse they be goods set apart and preserved
 for her livelihood, by some agreement or the like,
Mich 55.

5. A woman divorced from her husband *Causa*
judicialis, sued in this Court for her portion, her fa-
 ther being alive, and recovered it, *Burrowes* case, To-
 81.

6. The wife being parted from her husband, and
 having an Estate to her selfe, was allowed by the
 Court to devise it by her will, *Mich*, 15. *Caroli* To-
 97. *Georges* case.

7. If a feme sole being possessed of a term grant-
 ed it over; or a term be granted by another to her
 for use, and then she taketh a Husband, and dieth,
 in this case the Court ruled it to go to the Executor,
 or Administrator of the wife, and not to the survi-
 ving Husband.

8. A being possessed of a term; granted it upon a
 Marriage to be had between him and *R. S.* to *I. S.* her
 sister to her use, and after marriage *A.* dieth, and
 she marrieth again, and then she dyed, *I. S.* the bro-
 ther took out Administration of her goods, and got
 the Lease, and the second husband sued him in this
 Court for the Lease, but the court would not relieve
 him, *Pasch*. 32. *Eliz* *Wishernams* case in Chancery,
 Cook upon Littleton 350.

Y

8. A.

8. *A.* being possessed of a Lease for years, granted it to *B.* and *C.* to the use of *A.* and his Wife, and afterwards *A.* granted away all his Interest to a stranger, & the court would not order it against the wife, *Dyer* 369. *Cromptons Jurisdictions*, 65.

A. conveyed her Lease for years to Lessees in trust, to the use of her Daughter and Children; but finally *A.* had a Daughter by one Husband, who had Issue, and it dyed, and the Husband also, then she married again, then the Lessees in trust conveyed the Lease to her Mother and her second Husband, and discharged the trust, she gives it to her Husband, and the Heir sued for it.

It was ordered, that the Husband, & not the Heir should have it: *Baskervilles case*, *Tothil* 95.

A Widow being about to marry, to prevent her Husbands disposal of the Land conveys it to friends in trust, who with the Husband do sell it for valuable consideration, and she sued in Chancery, & the Court decreed that the Purchaser should reconvey it to her, but should first deduct all his disbursements; *Fitzjames his case*, *Tothil* 43.

A single woman, Widow, or Maid, may sue and be sued here as another Body, of which take some few cases.

1. A widow of a Tenant in *Capite* sued here for her Dower and had a Commission to set it out, in *Wilds case*, 25 *Eliz.*

No woman shall recover Dower of a trust in this Court, *Mich. 2. Caroli, Kemps case*.

When the woman cannot tell who is Tenant of the Land, she may sue, (albeit her writ of Dower here at Law) to discover the Tenant, to know against whom to bring her action, *Tothil* 99.

A. conveys Land to *B.* and his Heirs, to the use of him and his Heirs, in trust for *C.* and his heirs (B. having

having then a Wife) *B.* dies, and his Wife sued for Dower of the Land, *C.* sued against her for relief there, and it was denied, yet the Wife of *C.* should have had Dower in this case, for a woman shall have no Dower of a Trust, *Hernes case, Tothil 9.*

So *A.* delivers *R.* 500*l.* to put to use for him, and doth buy Land with it, & makes *A.* believe it is for him & in his name, but it was in his own name; it seems satisfied herewith, *B.* dieth & his wife is to be endowed of the Land, and the Court would give *A.* no relief against this Suit: *Trinity Caroli.*

A Copy-holder may not be sued for Land without the Lord, *Caries Reports 57.*

An Heire also here in some cases shall sue and be sued, further then the Law bindeth him, as in the cases ensuing.

An Heire of an Estate in Taile, having Lands in fee, descended from the Ancestor, in lieu thereof is bound by decree to pay the purchase money, or lesse the Purchaser have the free Land, *Parces case. 8; Jacobi Tothil 184.*

The Mother and Son bought tailed Land of her Ancestor, to the Plaintiff some of the Money due on a Bond which is lost; the Court thought fit to charge the mother and the son, because of the Land in their possession.

The Father sold his intailed Lands, but had little for them; it seems the Heir may compel the Purchaser to give the worth, *Tothil, 182.*

The Father articulated for Land, the Son no party, but consented to it, and it was decreed against him; *Pauls case Trin. 4. Jacobi, Tothil 69.*

A Deed not inrolled was decreed against the Heir of the Land, *Tothil, 55.*

The Father conceiving his Land to be Free-hold gave

Gave part of it to a younger son, and it fell out that there was an old sleeping Deed of intaile, & yet it was ordered the yonger son should have it: *Pounney's case, Tothil 57.*

Executors may charge or be charged in equity further then the Law doth charge, wherein as to suits or Acts by them, take these insuing.

1. Here they may sue one the other, *Tothil 8.*

2. One of them may sue an Executor of an Executor, if he have gotten the estate into his hands *Briertons case, 6. Jacobi. Tothil 87.*

3. Two Executors be, the one doth disgrace, the Act of the other shall bind in Equity as it doth in Law.

As to suits against Executors take these things.

First, One Executor alone without the Rest may be sued here, but he shall be charged for no more then he hath, *Harbages case, 45. Eliz Tothil 86.*

Secondly, An Executor shall be bound by decree against the Testator *Hil 5. Caroli.*

Thirdly, he must pay costs adjudged here against the Testator, if he have assets.

Fourthly, he shall not be charged here for a trespass done by the Testator, *Hollands case, Tothil 8.*

Fifthly, nor may he be compelled here to give bond to perform the will without special cause shewed, as that he is decayed in estate, or hath broken the trust already in some particulars, or the like *Brown's case, 32 Eliz Tothil 36.*

Sixthly, He may here be ordered to pay a debt by word, before a debt by specialty, *Tothil 53.*

One Joynt tenant, or tenant in common may here have reliefe against another.

The Father may have reliefe against his own son in case of breaches of trust for a Lease, *Pasch. 15. Dormer's case*

Of TRUSTS

Use of Trust was, and still is either of Land or of Goods, and both these are either expressed or implied.

A use of trust of land was a trust reposed in another, that he should suffer him that did trust, to take the profits of it, and he that was trusted, was to dispose the land according to the direction of him that trusted him; as when a Feoffment was made to J. S. and his Heirs, to the use of W. S. and his Heirs: here J. S. had the estate and property of the land, but W. S. had or was to have the profits in honesty and equity. So if one had agreed with W. S. for a peice of land 20 l. paid, and had no assurance, yet the equity of the land was in the Contractor.

The use of Goods is when one man hath them in trust for another.

The use of goods or land expressed, is when the use of trust is expressed between the parties upon the making of the Estate implied, when it is not declared upon the agreement, but left to the construction of Law, as if I bargain and sell my land, levy a Fine, make a Feoffment, or suffer a Recovery of my land without money, and no use expressed, this in Law is to my own use.

But if it be for money, it shall be to the use of the bargainee, conusee, Recoverer, or Feoffee.

If it be without consideration that I conveyed my land by Feoffment to J. S. to have and to hold to him and his Heirs to the use of his Heirs, in this case J. S. and his Heirs have the use in Law.

To every of those uses, there are two inseperable incidents, Confidence in the person, and privity in the

the state, expressed by the parties or implied by the Law : And when either of those failed, the use was either gone for ever, or suspended for a time at the least; and therefore if the Feoffee to use upon good consideration, had infeoffed another of the land that had notice of the use, the use had been gone for ever ; because howsoever there was a privity of Estate, yet there was no confidence in that person but if the feoffment had been without consideration, to such a one in this case the use had remained still, because the Law did imply a notice : so also seems the Law was, when it was made in consideration of Marriage onely

And if a Disseisor, Abator, or Intruder had come to the possession of the Land, whereof the use was albeit he had notice of the use, yet the use was suspended during their possession, and they should not have been seized to the use as the feoffee was, if they come not to the land in the *per*, but in the *post*.

If a Lord by escheat, Lord of a Villaine, or one that had entred for Mortmain, or that had recovered in a *Custavit*, &c. had come to such land, and had notice of the use, the use had been gone for ever for those come to the land in the *post* & above the use. And the Tenant in Dower, and by curtesy should not be seized to uses in being, for all the wanted privity Estate.

And if there had been tenant for life, the remainder in fee to the use of another, and the Tenant for life had made feoffment in fee to one that had notice of the uses, this second feoffee should not have stood seized to the first uses.

So if the Husband had made a feoffment in fee of the Land of his Wife, upon consideration, and without any use expressed, the Wife should not have had a *Subpana*, because the Feoffee was not in privity of Estate of the Wife.

And if *Cestui que* use for life, or intaile, the Remainder in taile with divers Remainders over in use had made a Feoffment to one that had notice, he should not have been seized to the first uses

But now at this day, by the Statute of 27. *Henry* the 8. Chap. the 10. the use of trust and the possession of lands, are for the most part united, and in all such cases where they are united, and the use executed by the Statute, the Chancery doth not intermeddle, but leave them to the Law. And such is this, where one seized of Land in fee, doth convey it to the use of one and his heirs, or heirs of his body, or for life, or to the use of one of his Executors, or Administrators for yeares.

But there are some uses & trusts still that are not executed by the Statute, and those remaine as they were before, and are in the Consuance and order of the Chancery, as where Lands are conveyed without consideration in fee-simple after this manner, that the Feoffee and his heirs shall take the profits, & deliver them to the Feoffor and his Heirs, or that the Feoffee shall account and give the profits to the Feoffor, or that the Feoffee shall convey the land to the Feoffor, or to his heirs, at his age of one & twenty years, or where it is conveyed to J. S. and his Heirs, in confidence that J. S. shall alien it to whom the Feoffor, or to whom W. S. shall appoint, or the like; or where the lands be conveyed to certain uses expressed, and there no other secret uses agreed upon between the parties.

So where land is conveyed to one without consideration to one and his heirs, without expressing any use or intent, this is to the use of the feoffor, who may dispose of it as he pleaseth; but if it be to any intent certain, as to take back an Estate with remainders to others, &c. Here he cannot change it.

These and such like uses and trusts are not within nor executed by the Statute, but they remaine as they were before the Statute; for all the state is in the party trusted, and the Grantor, or he to whose use the Grant is, hath nothing but a use for which he hath his remedy only in Chancery, where matters of this nature are determinable, for it is a rule that as the questions of uses and trusts that are within the Statute are to be decided and ruled by the Judges of the Common Law; so all other questions of uses and trusts that are out of the Statute are to be ruled & decided by the Judges of the Chancery. *Cook* 1.138. *Dyer* 369.356. *Crompton's Jurisdiction* 65.58.59. And the Judges in Chancery in ruling those cases, do proceed much after the rules they went by in the regulating of uses at the Common Law, before the Statute.

Before the making of the Statute, these amongst other were the lawes of uses.

1. The Feoffor was to take the profits of the land, and he might have disposed of it in his lifetime, or at his death to whomsoever he pleased, and his Friends in trust were to settle it accordingly, or be enforced to it by the *Subana* in this Court; & if he did not dispose it, the use was to go to his Heires, and if he had dyed without Heires or disposition, it seems the Feoffees should have had the land.

Secondly, If the first Feoffee had conveyed it to a second Feoffee to the same use, or to a second Feoffee that had notice of the uses, in these cases the second Feoffee had it to the same uses; but if the Feoffee had sold it *Bona fide*, or conveyed the land to one that had no notice of the uses, in these cases the use had been gone, and he to whose use it was remediless for the land.

3. A bruit of a trust, or ones saying there was a trust

to another, I. being about to buy the Land, because he would not have me to buy it, it seems is not sufficient, but a Suit about it, and proove of it in Chancery, is sufficient notice to him that shall buy.

4. If the *cestui que use* had appointed the land to be sold by his Feoffees to pay his Debts, the creditors might have compelled the Feoffee to sell it; if in his life-time, or by Will at his death had appointed them to convey it to *J.S. I.S.* might have compelled them to it, and so their Heirs.

5. The Feoffees (if any occasion had been) were to bring or defend any Action for the Land, and to plead such Pleas as the Feoffors should appoint, or be informed in Chancery to it.

6. If the Feoffee dyes, and the Land descend to his Heire, the party to whose use &c. as it seems had a remedy against him.

7. If the Feoffee or Donee to use, sell to one that knows of the use, the Subpoena shall go against them both, or likewise against the party trusted only, who must make a recompence for the breach of trust, if the Land be gone.

These amongst other were the rules by which uses at common Law were guided, & much accordingly are uses not executed by the Statute, and trusts of Lands and Goods ordered and guided at this day, as in the cases following, Of Inheritance and Free-holds, of Chatels, of Goods,

Of INHERITANCE, and FREE-HOLDS.

If I without any consideration enfeoffe one & his Heire of Land, to the intent he shall take the profit thereof, and deliver to me and my heires: Or

These and such like uses and trusts are not within nor executed by the Statute, but they remaine as they were before the Statute; for all the state is in the party trusted, and the Grantor, or he to whose use the Grant is, hath nothing but a use for which he hath his remedy only in Chancery, where matters of this nature are determinable, for it is a rule that as the questions of uses and trusts that are within the Statute are to be decided and ruled by the Judges of the Common Law; so all other questions of uses and trusts that are out of the Statute are to be ruled & decided by the Judges of the Chancery. *Cook* 1.138. *Dyer* 369.356. *Crompton's Jurisdiction* 65.58.59. And the Judges in Chancery in ruling those cases, do proceed much after the rules they went by in the regulating of uses at the Common Law, before the Statute.

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Of INHERITANCE, and FREE-HOLDS.

I without any consideration enfeoffe one & his Heire of Land, to the intent he shall take the profits thereof, and deliver to me and my heires: Or

These and such like uses and trusts are not within nor executed by the Statute, but they remaine as they were before the Statute; for all the state is in the party trusted, and the Grantor, or he to whose use the Grant is, hath nothing but a use for which he hath his remedy only in Chancery, where matters of this nature are determinable, for it is a rule that as the questions of uses and trusts that are within the Statute are to be decided and ruled by the Judges of the Common Law; so all other questions of uses and trusts that are out of the Statute are to be ruled & decided by the Judges of the Chancery. *Cook* 1. 138. *Dyer* 369. 356. *Crompton's Jurisdiction* 65. 58. 59. And the Judges in Chancery in ruling those cases, do proceed much after the rules they went by in the regulating of uses at the Common Law, before the Statute.

Before the making of the Statute, these amongst other were the lawes of uses.

1. The Feoffor was to take the profits of the land, and he might have disposed of it in his lifetime, or at his death to whomsoever he pleased, and his Friends in trust were to settle it accordingly, or be enforced to it by the *Subana* in this Court; & if he did not dispose it, the use was to go to his Heires, and if he had dyed without Heires or disposition, it seems the Feoffees should have had the land.

Secondly, If the first Feoffee had conveyed it to a second Feoffee to the same use, or to a second Feoffee that had notice of the uses, in these cases the second Feoffee had it to the same uses; but if the Feoffee had sold it *Bona fide*, or conveyed the land to one that had no notice of the uses, in these cases the use had been gone, and he to whose use it was remediless for the land.

3. A bruit of a trust, or ones saying there was a trust

to another, I. being about to buy the Land, because he would not have me to buy it, it seems is sufficient, but a Suit about it, and proove of it in Chancery, is sufficient notice to him that shall buy.

4. If the *cestui que use* had appointed the land to be sold by his Feoffees to pay his Debts, the creditors might have compelled the Feoffee to sell it; if in his life-time, or by Will at his death had appointed them to convey it to *L.S. L.S.* might have compelled them to it, and so their Heirs.

5. The Feoffees (if any occasion had been) were to bring or defend any Action for the Land, and to plead such Pleas as the Feoffors should appoint, or be informed in Chancery to it.

6. If the Feoffee dyes, and the Land descend to his Heire, the party to whose use &c. as it seems had to remedy against him.

7. If the Feoffee or Donee to use, sell to one that knows of the use, the Subpoena shall go against them both, or likewise against the party trusted only, who must make a recompence for the breach of trust, if the Land be gone.

These amongst other were the rules by which uses at common Law were guided, & much accordingly are uses not executed by the Statute, and trusts of Lands and Goods ordered and guided at this day, as in the cases following, Of Inheritance and Free-holds, of Chattels, of Goods,

Of INHERITANCE, and FREE-HOLDS.

If I without any consideration enfeoffe one & his Heire of Land, to the intent he shall take the profit thereof, and deliver to me and my heires: Or

to the intent he shall account to me and my Heire for the profits thereof; or to the intent he shall convey it to me and my Heirs, or to my Heire one and twenty yeares old, or to the intent that he shall alienate it to *L.M.* and his Heirs, or to whom I shall appoint; or I convey it to certain uses expressed, but there are other secret uses agreed upon between us; in all such like cases which are out of the Statute of uses, this Court of Chancery, if any complaint be, will order the parties trusted to perform the trust.

If I without any consideration bargain and sell my Land by Indenture, to one and his Heires, to the use of another and his Heires (which is a use upon a use) it seems this Court will order this: But if it were in consideration of Money by him paid here it seems the expresse use is void both in Law and Equity.

And if a woman in consideration of foure hundred pounds paid by her Son, bargain and sell her Land by Indenture to him and his Heires, to the use of her selfe for life, and after of the Heirs of her Son, in which case by Law the Fee-simple is to the Son presently, and the use of her life to the Mother void; nor is there as it seems any relief for her in this Court in a way of Equity, because of the consideration paid, but if there were no consideration, on the contrary, *Tothil* 188.

A voluntary conveyance was made to Friends in trust, to the use of the mans own children, with a Remainder over; the Feoffor being indebted much Money, the Court inabled him to sell part of it to pay his debts, *Grants case, Tothil* 42.

If one that hath Land in trust, convey it to one that hath notice of it, and he convey it to one that had no notice of it; in this case he that had no notice

Fee is seized to the first uses, *Pills case, Tothill* 186:

If one convey his Land to Friends in trust, and after sell the inheritance, the trust in equity goes to the Purchaser, *Decrees Tothill* 44:

Copy hold was surrendered to the use of J. S. to the intent that he should pay an Annuity to a third person, the which he refused, the Court ordered him to pay it with all the Arrears, *Tothill* 107.

Of CHATTELS *reall*, and *term of years*.

IF I be seized of Land in Fee, and convey it to D. L. and his Heirs, to the use of W. S. his Executors and Administrators for twenty years, or for any other number of years, in this case the use will be executed within the Statute: But in case where I be possessed of a term of years in being, and grant it to friends to any uses and purposes in trust, this is out of the Statute of uses, and orderable in Chancery, only where if the trust be broken, I must have remedy.

One possessed of a term in years, conveys it to Friends in trust, to the use of D. for life, and after of the Heires males of his body, in this case the Court resolved an order, that D. so long as he hath an Heire may dispose it; and that an intaile of, or out of a Chattell is not good: But a remainder in taile of a truth may be ordered in equity, the Judges agreeing to it, *Tattons case, 7 Jacobi, Tothill* 83.

The general trust of an Executor is to pay debts and legacies, and for the surplusage to account to the Ordinary, *Ad prior sua*.

Henry Earle of Darby, conveyed certain leased lands in trust to Doughty his servant for payment of his

his Debts, and upon a mediation of an end of Controversies between the Daughter of *Ferdinand*, Eldest Son of *Henry* Earl, and *William* his younger son now Earle : It was ordered and agreed, that *William* the now Earl should pay all his Fathers Debts ; whereupon *Doughty* conveyed all those leases to *William*, and after the Creditors sued him in Chancery, but had no relief, and were ordered to pursue their remedy against Earl *William*, *Hil. 1 Jacobi, Carib Reports 25.*

The Plaintiffs Wife conveyed away her Estate to the Defendant her Son before marriage, and after the Defendant conveyed it to his Children : In this case the Court conceiving it to be done without any Consideration, did decree it for the Plaintiff against the Defendant and his Children, *Poveys case, Tenthil 9.*

Of CHATTELS *personal*, or GOODS.

IF I deliver Money or goods, or cause a statute bond or other especialty to be made to another to my use, or to any purposes or intents in trust, & he performe not the trust, I may compel him to it, or to give me recompence for the breach of the trust here, and therefore if he dispose the money or goods to his own or any other use, then I appointed it, or will not dispose it according to my minde, or release or discharge the duty, my remedy is, by *Supbana* in this Court, and if in these cases the Goods or Money be taken from him, or he have any injury in them, he must sue for remedy, and I may compel him to it here, *7. Ed. 4. 14. 29. Cromptons Jurisdiction, 43. 62. 65. Brook Feoffment 60.*

If a Statute be made to *A.* and *B.* to the use of *A.* alone,

one, and the Conusor get a release of it from *B.* and
 one, in this case *A.* shall have remedy here against
 them both, (as some say against *B.* onely, and not
 against the Conusor,) See *Caries Reports* 14. and

OF BARGAINES, AGREEMENTS, or PROMISES.

ARTICLES of agreement was briefly drawn between two, and their hands to it, for the Scale & assurance of lands for money? the Seller refused, and upon complaint here was ordered to make the assurance according to the agreement, the manner of the assurance referred to a Master of the Chancery: *Chivers case Hil. 4. Caroli.*

A suit was brought here upon paroll agreement to execute an assurance of land upon a Marriage agreement (the case thus.)

A. Suitor to *B.* the Brother of *A.* comes to *B.* & tells her that if shee will marry his Brother, he will assure her of twenty pounds a year land for a Joyn-ture, and shee did marry him, and after he refused: It was decreed in this court, and the court of Requests both, that he shall be compelled to it; and where it is said, that heretofore the Chancery did not use to decree paroll agreements for assurance of Land, it is now otherwise; for where there is any Execution of it by payment of all or any considerable part of the money for the land, there the court doth decree it.

In the Exchequer one sued by English bill upon a paroll agreement to have land assured, and shewed that he had provided two thousand pound the purchase

chafe money to his great losse, &c. And the other refused to assure the Land: In this case the Court would not decree the assurance of the Land, but decreed he should pay the Plaintiff damages for his losse. So in 13 *Caroli*, *Olivers* case.

The agreement was to convey the Land, as Counsell should advise the Paper Book drawn, and agreed on to be ingrossed, and then the Seller Refused to proceed: in this case the Court would not decree it to be done, because no Articles nor money paid, but a bare parol agreement; and yet some speciall circumstances may have this binding, and therefore a verbal agreement between Lord and Tennant, because the Tennant was an ancient Tennant, and hath been at charge in building, was decreed. *Kings* case, and *Hunts* case, *Tothil* 65 66.

A. covenants with *B.* upon the Marriage of his Daughter to levy a fine of the Land to *D.* And the Daughter being dead, and some mony unpaid, *A.* sold away the Land to others. In this case he was ordered for a hundred marks to make the Estate good, *Mich.* 8. *Caroli* *Pages* case *Tothil* 47 & 48.

A Bill was preferred here, supposing ten shillings paid; and two thousand pounds to be paid for land to have the land assured, and upon demurrer it was over ruled, because it may be to prepare for an Action of the case; but it seems in this case the court would not decree the assurance. *Tim.* 38. *Eliz.* *Williams* case, *Tothil*, 72.

The customes of a Mannor were in question between Lord and Tenants, and Tenant and Tenant: And a general agreement made by deed indented and inroled here, and a Bill to establish it, and nothing could be found, but the Deed: & yet the court would not alter it, albeit it was objected that the Lord was at the time of the agreement Tenant in
Tail

tail, and some of the Tenants infants, and feme Coverts; *Caries Reports* 22.

If one enter into a Statute to I.S. who doth afterwards by Indenture of agreement promise & agree with the Conusee, that in case the conuser did faile of payment, Execution should be done upon some certaine Land only: In this case, if after it he shal sue Execution upon any other Lands, the party grieved may have reliefe here, and compel him to perform his agreement, & have an injunction also if he desire it: *Pulvertostis case, Caries Reports* 37.

The Plaintiffs Bil was that he leased a house to the Defendant, and did covenant to repair it, and then the Defendant did covenant to keep it so, and that the Defendant as wel to make the Plaintiff break his Covenant, as to free himself from his Covenant, did interrupt & threaten the workmen, so that they durst not go on, and so the houses are decayd, and the Plaintiff without remedy. The Defendant demurred, pretending the Plaintiff had remedy by Law, but it was over-ruled, and put to answer: *Caries Reports* 59.

A Bill was brought to be relieved against the Defendant as Brother and Heire, for that the Plaintiff had paid to his deceased brother, 34l. for a Lease, and he died before it was made, and therefore desired his Lease or the money, and was relieved; *Caries Reports* 77.

One Joynt-Tenant promised the other, lying on his death-bed, he would not take advantage of the survivorship, but suffer him to dispose of it by his will, by which he devised part of the payment of his debts, and the Survivor was ordered to make the Estate accordingly; *Caries Reports* 81.

The Plaintiff bought of the Defendant the reversion of a Copy hold, which he could not enjoy, as was confessed

fessed by the Defendants answer ordered by the Court, to shew cause why he should not repay the money back againe, which he had received on the Bargaine; *Caries Reports* 91.

One brought his Bill to be relieved, hereupon a promise made to him by the Defendant to surrender a Lease upon the payment of a hundred Marks; and because the matter was meet for the Common Law; *Caries Reports* 65. 63.

The Bailiffs of a town promised a lease, the Court upon this would not give any reliefe against any of their Successors, but against the same persons, as common persons upon the promise; *Caries Reports* 103.

What mis-prisions in conveyances, or other Deeds are relievable here.

WHere there is any mistake in a Deed, so that it is not made in prusuanee of the intent and Agreement of the party, this Court gives reliefe.

If the word Heirs being in fee-simple, or the like, be omitted; or that part of the Land bought & sold be left out of the Deed, and that it do appeare that the conveyance was made upon good consideration, the Court in this case will rectifie: See to this purpose, *Caries Reports* 16 & 17.

Dean and Chapter of Bristow made a Lease, mistaking the name of the corporation, and the Court held that for Leases made for some time of continuance, and upon good consideration there should be reliefe given here, *Caries Reports* 32.

The lessee in the lease was not named in the premises of the lease, but in the *habendum* only; decreed to be

good, and being referred to the two chief Justice
the chief Baron was by them certified to be good
Law, *Butlers case*, 22. *Eliz. Caries Repo.* 83. One
ought his Bill here to be relieved, for that he had
conveyed by the Deed more Land then was intended
and agreed; in this case because it appeared that the
tenant was a Purchaser, upon a valuable con-
sideration, the Court would not relieve the Plain-
tiff, *Cliffords case*, 4. *Jacobi*, in Chancery: And yet
where more Lands passed by a Fine then was inten-
ded, and the party relieved here by the Judges con-
sent; *Caries Rep.* 20.

Mistakes in making of a bond in either of the
parties names may be helped here, *Colstones case*,
Tothil 7.

If a power be reserved to make Leases, by a Co-
venant without a transmutation of the possession, no
help can be here, because it is void in Law: And
if be upon a change of possession, and the power
not precisely followed, that is doubtfull, and ra-
ther more strong against help, for then the Estate
works and the power gone, and upon Wills no help:
Caries Rep.

If one be bound to me for money, and the same
after the sealing of the bond I give him a re-
lease for other things, which by mistake is made too
generall, whereby this bond is also released, in this
case I may be relieved here, & shall receive the mo-
ney notwithstanding, *Tops case. Tothil* 27.

Haddam the Husband was ordered to procure his
wife to levy a Fine, and to enter into a new bond
of five hundred pounds, because the old Bond was
void nothing, by the mistake of the writer, *To. Jac.*
Tothil 40.

Where an assurance of Land is made defective, this Court will enforce the perfecting of it.

WHERE a conveyance is made for Lands or Tenements, and it is found defective, and the estate not well excluded to the Purchaser according to the intent of the parties, for lack of words, sufficient in the Deed, or for lack of Livery, Seisin, Attornment, Inrollment, or the like: and there was a good consideration given for the Land; in such like cases the court in behalfe of the Purchaser will compell the party, in whose power it is, to perfect the estate, Tothil 44.48 182.183.138.

Where a man for money, or other valuable consideration sells land to one, and the word Heirs is left out in the *Habendum*, in this case the party who sold shall be compelled to amend it: And so when less is granted then was intended, and so for any other mistakes, Caries Rep. 16.17:

A Messuage was demise'd (*cum pertinentiis* onely) and because sundry Lands had been occupied formerly therewith for the same rent, and by Lease of the same words, the Lord chancellour Bromley, and the Judges ordered it should all passe, though perhaps by Law they will not passe by those words; but it is usual in such like cases it is very considerable in Equity what the value of the Land is, and what money is given; for if the House with the Appurtenances be sufficient for the money, unless the intent of the parties were to grant the whole, it seems agreeable to equity that there should be no further Extent made of the words then what the Law makes.

The Ancestor takes money for a Lease, and dies before it is made; the Heire must make it good or repay the money, Caries Rep. 7.

Where a man for money, or other valuable consideration, sells Land by Deed, but Livery of seisin is committed; I may compell him afterwards to do it, in this court: So likewise, if upon the same consideration he sell me Land in two Countries, & have given me livery of seisin of the Land only in one County, the court will order him to make livery in the Land in the other County, or pay back part of the money, Caries Rep. 17.

Where a conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this case shall be compelled by this court to attorn, & so was decreed in Hillary Term, 3. Caroli.

A. was Lessee for one and twenty years, & leased B. for ten years, rendering Rent; A. without the consent of B. did grant the Reversion to C. and B. refused to attorn, and C. thereupon sued B. in Chancery to compell him to attorn; and in this case it was decreed by the Master of the Rolls with the assent of the Masters of the Chancery, that he should attorn and pay the arrearages; but Justice Whitlock then dissenting was utterly against it, and of his opinion were the two chief Justices, chief Barron, & Justice Aldridge; But they all agreed the parties themselves by the assurance may be compelled to make Livery; and it hath often been denied here to compell him to attorn who is at liberty by Law, especially where the party quarrelleth at the Tenants Estate, or encroacheth into part of the Land, or hath covenanted for recompence in case of non attornment, Caries Rep. 4.

where the Conveyance is made without good Consideration, This Court of Chancery will give no reliefe.

FOr instance; VWhere there is a rent granted, and no Deed to warrant it, and nothing given for it, or a Reversion is granted, and nothing is given for it, this court will not inforce the grantor to perform it.

VWhere Estate was made by covenant, and made good by Law, it was ordered by this court to be made good, Princes case, 40. Eliz Tothill 85.

A Deed which was not inrolled, was by this court decreed against the Heire of the Land, but agreed should not bind any other Estate challenged by survivorship or otherwise, Pauls case, 14 Caroli, Tothill 54.

ABill was here exhibited to be relieved against the Defendant, who would have avoided an Estate for want of Livery of seisin, & it appeared that the Plaintiff had enjoyed it quietly five and twenty years, in this case it was decreed he should continue the possession without Livery and Seisin, *Ridens case* Jacobi Tothill 54.

Upon Promises, concerning Goods and Debts.

WHere there is a contract made for Goods and Chattels wherein the contractor hath

Wrong done him, if he gives (*Quid pro quo*) that so it appears there is a good consideration in it: In this case the Contractor may be here relieved, but on the contrary where there is no consideration, for there is *Nudum pactum*.

Where a man makes a promise without consideration to build a man a house, make him such or such Goods, he shall not here be compelled to it: *Crompton's Jurisdiction* 49.

A spontaneous and generall promise without any consideration was made by the Son to pay his Fathers Debts (no advancement coming to him by his Father) he being sued here, the cause was dismissed: *Alexanders case* 7 *Caroli*.

Where the Obligee agrees with the Obligor, to give him day for payment of the debt, and he sueth him or his Surety before the day given here, this court will relieve him.

Where relieve shall be had where there is extremity used, upon a Statute Mortgage, Bond, or other Ingagement.

Where a man by way of Mortgage conveyes Land to another for security of money lent: in this case albeit the time of Redemption is past, yet upon the paying of the principall money, Interest and damages, he may have the Land again by Decree of this Court; yet where the Mortgage hath been of long continuance, as of twenty yeares or upwards, this Court will hardly give back the Land unless in some cases extraordinary: And if the Mortgager make a Feoffment of it to a stranger, and so

extinguish the condition, unlesse it appear to be to the end to pay the debts, the Feoffee perhaps may not have this advantage: Caries Rep. 53. *Cromwell's case* 39. Eliz. Tothil, 79.

A Copy-holder in fee surrendered to the use of one and his Heirs, upon condition of redemption; after this computing his Debts, and writing them down, he doth will part of his Land shall be sold to pay his Debts; after his death one of the Creditors doth pay the money at the day of the Mortgage, yet the Surrender was Enrolled, and another creditor sued him and the Heir here, and had a decree that the Land should be sold, to pay the Debts, & if any remained it should go to the Heir: Caries Rep. 7.

Where there was Lessee for years rendering Rent, and two men striving for the Reversion, he exhibiting his Bill against him, upon payment of his money in to court, according to his Lease, he had an injunction to forbid them both any further to trouble him: Caries Rep. 46. and 47.

Where the conveyance of a Statute extend the Land in the hands of one of the Purchasers, and spare the other Purchasers: In this case he may be compelled to extend upon the whole in all their hands: Caries Reports, 111. 112.

Where a man grants a Rent charge out of all his Lands, and after sells it by parcels to divers persons, and the Grantee force one only to pay it, the party so paying it, may here be relieved, and force the rest to contribute, and the Grantee to take no more of him then what is answerable to his proportion of Land; But in such case he must be sure he make a title that have bought any of the Land, Defendants, that so he may make them chargeable with the Rent, and then they must shew cause why they should not contribute: Caries Rep. 2. 23. 92.

Wh

When the conusee in a Statute, or Plaintiff in a Judgement hath received satisfaction, the Plaintiff in Chancery, or conusor, his Heirs, Executors, Administrators, or a Purchasor charged or chargeable by it, may force him if he be living, or his Executors, or his Administrators, if he be dead, to acknowledge satisfaction upon the Judgement, or to deliver up the Statute: & if the Statutes be very ancient, and nothing done upon them, this court will enforce the Owners of them to deliver them up without satisfaction. In like case this court will force the delivery up of old Bonds. Tothill 178. 179. *Earles Reports*, 145. 146.

Where the Plaintiff had Judgement and Execution against the Defendant for three hundred pounds, he was by this court here ordered to take it out for 100l. only: *Carriess Rep.* 51.

Where a man upon an obligation, &c. either at, or after the day according to Law, hath paid any mony, and hath no acquittance for it, or have otherwise at, or after the day satisfied it, and hath no acquittance for it, and it appears the Obligee hath accepted it, and is satisfied, and yet keeps the bond, and refuseth to give the party a discharge: In these cases he or his Executors &c. after his death may enforce him, his Executors, &c. after his death in this court to discharge it, and to deliver up the Ingagement: *Carriess Rep.* 74. Tothill 26. 27.

Where a man doth his utmost endeavour to pay money at the day, and to that purpose after he hath provided it, he is robbed, or let by some other chance afterwards makes tender of it in some short time: so where part of the money is paid, & yet the whole Ingagement lies, and the party that hath it doth refuse to deliver it up, or to receive the rest of his mony, it being rendred shortly after the day, or acknowledge

ledge what is payd, &c. *Caries Rep. 1.*

So where the Bond is to do any thing other than the payment of money, and the thing is done, and the Condition performed, *Caries Reports. 45. 46.*

Where a man takes a double security for one and the same debt, as where he takes a Bond or a Bill and Goods in pawne, or any thing of the same nature, this Court will enforce him that hath taken his double security, to deliver up one of them, *Tothil 26 and 27.*

Where I appoynt a Serivener to put out and receive my money, & by my direction he doth receive the money due upon a Bond at the day, and the Bond remain in my hands, and I refuse to deliver it up, this Court will enforce the delivery of it up. *Hunts, case 22. Jacobi Tothil 175.*

Where a man enters into a Bond or any other engagement, for money unlawfully gotten, as at Dice or Cards, or upon a cheating contract, or the like, this Court will see him relieved against it, and have it took up or cancelled: *Tothil 23. 24.*

Where a man gives an Engagement for that, that is nothing worth, and which is neither gain to the Obligor, nor losse to the Obligees, as for debts, things in Action not recoverable, here this Court will give relief.

A. had a Son he intended to present to the Church of Dale. and he being sickly presented C. for the present, taking Bond of him of 600 l. to resign upon request: C. is instituted and inducted. After the Son of A. becomes healthy, and C. is required to resign, he refused, his Bond is sued and he comes into this court for relief, it was denyed to him, and the Bond agreed to be good in Law and Equity: *Trinity 6. Caroli, Wood and Berries case in chancery Tothil 26, 27.*

When

Where a man makes a Bond not to marry without the consent of Friends, and the Bond becoming forfeit, is sued: it seems this Bond is not good, and this Court will give the Obligor relief, Tothil 26.27.

Where money is paid upon the redemption of a Mortgage by Indenture, without taking any acquittance; this Court will enforce the Mortgage to bring in the Indenture to be cancelled here; Caries Reports 7.

The Son and the Father were bound to the Defendant in 500 l. to stand to the award of the Lord chief Justice, who ordered that the Son who was Plaintiff, and had the reversion in Fee, & the Father who had the Estate for Life, should make such assurance as the Defendant should reasonably devise. The Defendant in pursuance thereof tendered an assurance to the Father to be seal'd, who being old & blind, desired time to advise with friends, the Plaintiff the Son seal'd, & the Father did afterwards offer to seal, & then the Defendant said he did not care for his seal, but he put the bond in suit upon the Fathers refusal formerly, and it was stayd by order of this Court: Caries Reports 105.

In any of the afore-recited cases, if the party to whom such engagement is made, make use of it in any other Court by way of suit against him that entered into it; he may in this Court by injunction stay the suit, and shall have the matter ordered here as in equity is fit to be done: Tothil 23. 24. Sucklyns case, 1. Caroli.

This court gives relief against the injuries of other courts of Justice by their over-nice and strict observation of the Rules of the Law.

Where there is an extremity used against a man upon a judgement had against him in any Court at Law, for money or Land, this court although it will not

nor make void the Judgement, yet will it order the persons as it shall see cause in Equity, and this was resolved upon a speciall debate by the Kings command, in 14. King James.

In all cases tendring to overthrow of Judgements had in other courts, this court neither may nor will not examine or revoke them, for if so, it would render businesse endlesse; See Caries Repors 74. 79.

The Heire coming into his Fathers house, had of his Fathers Goods worth five shillings, and the Defendant sued a bond of five hundred pounds against the Heire as Exeutor of his own wrong, and proving he sold or gave away the Goods, a verdict passed for the whole five hundred pounds, which appearing by the certificate of the Justices of Assize, an injunction was granted to stay all proceedings in this Action, and to forbid any new Action, till the court have determined the matter, Caries Reports 49.

A debt upon a single Bill satisfied, and the Bil not delivered was sued, and Execution gotten, and the party was by this court relieved, 22. Eliz. Owens case, Caries Rep. 74.

If one man doe unduly get a Judgement in any court in the name of another, relief may be had here; Caries Rep. 76.

A drunken man being sued by another for words spoken in his Drinke, tending to defamation, sought for relief here, but could not have none: *Qui peccat obrius, luat sobrius* Caries Rep. 93.

One exhibited his Bill for relief upon an Obligation of three hundred pounds, which he entred into conditioned for the making a Joynture to his wife upon consideration of one hundred seventy four pounds promised to him by the Defendant in Marriage, which

which was never paid to him; he sued at Common Law upon the bond: In this case an injunction was ordered to pay proceedings, Caries Reports 112.

In what cases the Tenant Copy-Holder shall be relieved, against the hard dealing of the Lord of the Mannor.

First, If the Lord wil out his Tenant that payes his Rent, or does his Services, or if the Tenant surrender in court to the use of another, and the Lord refuse to admit him, to whose use the surrender was made, or will not keep court for the benefit of this Copy-holder, or exact uncertain fees, they being certain; this Court in these cases will give Reliefe.

Secondly, If he will not admit the Tenant copy-holder upon a Discent.

Thirdly, if the Tenant Copy-holder be outed of his copy hold, and the Lord will not hold a Court whereat he may sue for his Right.

Fourthly, if a false Judgement be had against a Tenant Copy-holder, and he petition to the Lord to redresse it, and he refuse.

Fifthly, If the Tenant Copy-holder petition the Lord to grant him a license to let, and he refuse it.

Sixthly, A woman Copy-holder for Life, the Reversion is granted to two for their Lives, *cum post mortem, vel foris facturam* of the woman, it shall happen, and she take a Husband that doth surrender to the first in Reversion, who is admitted and dieth, and after

after the next desireth admittance, & could not have it, but the Lord entreth as an occupat (as he might) and the Husband and Wife were willing to surrender to him in the Reversion for life, and the Lord refusing to keep a court, or leave the possession, was ordered to do both in this court. Tothil 3. 44. Caries Reports 3. Kitchen 82. 89.

A copy-holder granted by the Lord, at a court held out of the Mannor, made good against the Lord by decree of this court, Markes case, Tothil 45

Where the Lord imposes an unreasonable Fine upon his Tenant upon a surrender, &c. The reasonableness of the Fine shall be there adjudged of, and this court will give reliefe, A yeares value of the Land hath been here allowed good, Caries Rep. 14

This court gives reliefe to the surety against the Principall Debtor, or creditor.

Where there is a Debtor with a surety and creditor, and the principal Debtor, and creditor, by compact, and agreement without the privity of him who is Surety, continues the Debt after the first day of payment, when the surety doth suppose it to be paid: In this case this court will compel the creditor to take his reliefe from the principall Debtor, & discharge the Surety, his Heires, Executors, &c. Miles case, 5. Caroli, Hares case, 10. Jacobi, Saunders case, 10. Jacobi Tothil. 121.

Where there is a detainer of any Lands, Deeds, or Goods, this court will give reliefe towards the discovery and recovery of them.

As where a man hath title to Lands and intends to bring his Action, but cannot discover who is Tenant to the Land: In this case he may sue the Occupier in this court, and hee will be inforced to shew what he, or any under whom he holds, claims to his knowledge, and then he may know whom to sue, and upon what grounds.

Where

Where the Defendant held beyond his term, this court inforced him to shew what Terme his Lease was for, Mich. 6. Caroli, Tothill 183.

The consuee of a Statute did by the power of this court inforce a Lessee for yeares to declare all the particulars of his Lease, that so he might discover whether it were extendable or nor, 11 Caroli, Tothill 183. Creswells case, Tothill 9. Caries Rep. 16.

Where Writings are detained from a man, if the court do see cause, it will inforce the Defendant to bring the Writings into court by a *Duces tecum*, Caries Rep. 43. 52. 53. 67.

This court gives reliefe for the recovery of Land, Debr, or Duty where the Land gives none.

Where a man hath just title to Land, but hath lost his conveyances, this court will give reliefe for the recovery of his Land, Caries Rep. 24. Goffats case

Where a man hath good title to Rent, but no meanes to gaine it; as if it be a Rent sack and he never had leisin of it or any other Rent wherein he hath had no attornment of the Tenant, or supposing the Rent is by some accident (without any recompence) for it discharged: So if it hath been usually paid, but I can shew no Deed for it: In these and the like cases this court will give reliefe for the Recovery of it; Tothill 171. 172. 173.

Where a man hath a Debt due to him upon specialty, and hath lost his Writing, or cannot come at it: In this case if he have witnesse to prove it, he may be relieved here for the recovery of it, Caries Rep. 25.

Where an *Elegit* was returned and filed, and the time thereof elapsed; & yet the Plaintiff unsatisfied of his debt, this court will give him reliefe by reviving the *Elegit*, Tothill 179

Where a man makes a Vill with severall devises

ses, this Court will direct how they shall be taken and performed in equity.

The meaning of a Will is to be performed here, Cobs case, Tothil 141.

Where there was a Devise void in Law, by reason of a mis recitall of a Grant, and lack of an Attornment, this court did here decree it to be good; Bacons case, Tothil 79.

This court doth give relief against a fraudulent practice to avoid a Lease, Caries Rep. 18. and 22.

So likewise to avoid a debt, Caries Rep. 18.

This court will give relief in avoyding conveyances fraudulently made, as where there is a Suit depending between two for Land, and the Defendant hanging the Suit, make secret conveyances of the Land, this court will order him to discharge the Land thereof, Tothil 198. Harbins case, Tothil, 9.

Thus much shal suffice so have spoken concerning the generality of the causes of the court of chancery takes consufance of, in which for your further satisfaction I refer to the Reports of Mr. Tothil & Sir George Carew.

It remains now wee should come to the practick part of it, which directeth for the most part their whole manner of proceedings wherein for methods sake we will begin with their first process, called a Subpæna.

THis Subpæna in the leading proccie of this court as to the procedure by Bill and answer, and thus doth

both require the Defendants appearance in this court by a certain day under a certain pain, to make answer to the complaint of the Plaintiff, which is indeed the Bill which formerly was wont to be put in before the Subpæna was sued forth, but now otherwise used; this is called a Subpæna to answer and distinguished by that name, in respect there are severall other Subpænas, in order to further proceedings, as a Subpæna for costs, a Subpæna to make a better answer, a Subpæna to rejoyne, a Subpæna to hear Judgment, a Subpæna for Witnesses to testifie, &c. A Subpæna *Duces tecum*, for Writings, Evidences, &c.

Touching the Subpæna to answer, you must be very careful there be no mistake in the body of the writ, for that may prejudice the Plaintiff, & the Defendant may take advantage if he find any; but if there be a mistake in the Labell only of the writ, no advantage is to be taken by it.

This writ may be made returnable two wayes, either upon the common dayes of return, as from the day of Easter in fifteen dayes, &c. or upon a day certain, after any of the usuall Returns, or after any the great Feasts, from whence the returns take their names.

This word (Next) must be added where it is requisite, as where the great Feast be either to come or past.

The writ of Subpæna is to be served before the returne thereof be past, which they usually do, either by the delivery of the writ it selfe under seal to the person of the Defendant, or by shewing the writ under seal unto him, delivering him a Note or Labell of the day of his appearance, and this is more usuall when there are more persons then one in the Subpæna, whereby the body of the writ may be reserved to be left with the last.

Or else the Writ may be left at the Defendants dwelling house with one of his Family, or at his place of residence, See collection of orders. &c.

It is conceived it may be a good Service to leave the Writ hanging upon the doore of the House, & to put it into the house under the doore, or within the Window of the house where the party doth dwell, or usually reside at. But that is where it is presumed afterwards comes to his hands, or that he might be in the house at the time, or had notice of it.

Where a Subpœna is served on the selfe-same day whorcon it is returnable, it is a good service if it be before Noon, and the rising of the Court in Chancery: And the Defendant so served shall be bound to an appearance with all speed.

Where a Subpœna is had against Husband and Wife, and the Husband alone is served and hath notice that it is against him & his Wife, this is a good service as to both, and for want of appearance, an Attachment may be had, either against the wife only, or against both. To which purpose See Caries Rep. 89. 101. 103. 106. 109. 110.

The Subpœna being served, the Bill must be put in in due time, or else if the Defendant appear and no Bill filed, they will get costs: to prevent which, take notice what time is prefixed for exhibiting the Bill after the day of the Return of the Subpœna.

If the Subpœna be returnable upon a generall return day, as *Crastino, Octabis, Tres. Mense, &c.* after such or such a Feast, then hath the Plaintiff time to put in his Bill untill the second day before Noon next following, the fourth day following every of the said returns, and you must account the return day, & the fourth day after it for two of the said four dates.

But

ur where the Subpæna is returnable upon such such a certaine day of the Moneth, then the must be filed the second day after it, before nner.

Where the Bill is not filed, and the Subpæna urnable on a day certaine; as on any day of the oneth, the Defendants appearance being entered, Attorney may prefer costs the next day after: and the Bill come not in the next day after costs so rferred before noon, nor presently after Dinner, e Defendant is discharged with such cost as the aster of the Court taxes him.

Where the subpæna is made returnable on a return y, in such case the next day after the fourth day costs day, and if the Bill come not in the next day noon, or presently after Dinner, (the defendant ving preferred his costs the day before) is dis- arged from attendance with his cost.

Where the costs are not voluntarily payd for want a Bill, either by the Plaintiff himself, or his lerk, to the defendant or his Clerk, in such case the defendant may have a Subpæna whereby to com- and the complainant presently upon sight thereof o pay the Defendant, or the bringer thereof the yd costs: And this Subpæna must be served on the laintiff personally, and upon such service, if the Complainant do refuse to pay the said costs accord- gly, in such case the defendant may (upon Affida- it made that the Subpæna for costs was served) ave an Attachment directed to the Sheriff of the County where the Complainant lives, to attach the Complainant for the said costs.

And if the Sheriffe of the County make return up- n that attachment, that the Complainant cannot e found, then an Attachment with Proclamation ay be used forth against him: and that Proclama-

tion being likewise returned by the Sheriffe as foreſaid, then a Commiſſion of rebellion may be ſued forth againſt the Complainant.

On the other ſide, if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after coſts day, then the Complainant upon Oath made, that the Defendant was ſerved with a *Subpœna*, may have Attachment, and further proceſſe, in caſe the Sheriffe return, the party is not to be found, &c.

The Affidavit that muſt be made of the ſervice of the *Subpœna*, muſt be made according as the manner of the ſervice was; for if the Affidavit made do not prove a good ſervice as before, no Attachment can be had upon it, and therefore he muſt ſwear as followeth.

That he belivered the *Subpœna* to the Defendant or that he ſhewed the *Subpœna* to the Defendant under the Seale of the Court, and delivered to him a Note of the day of his appearance, or a Label of the *Subpœna*.

Or that he left the *Subpœna* at the Defendants dwelling houſe, or lodging where the Defendant moſt abideth.

Or he may make Affidavit, that he heard the Defendant confeſſe that he was ſerved with a *Subpœna*.

If the party that makes Affidavit can ſwear, that he ſaw another (naming him) to ſerve the Writ as before; this will be ſufficient to maintain the Attachment.

There can be no Attachment regularly made againſt the defendant for not appearing, until there be a certaine and poſitive Oath made of the time Place, and Manner of ſerving the *Subpœna*, inſerting the return of the Writ.

And where any perſon ſerved with a *Subpœna*

injury, or wrong, either by word or deed to the party who acted in the service of it, or doth set at nought, or contemn the Writ it selfe, or the Authority of the Court from whence it issues, upon Oath made thereof, and motion thereupon, such person will be committed to the Fleet, &c. *Caries Reports.* 91. 92. 110.

Where there is appearance made by the Defendant within the time limited, and by the Bill filed: in such case the complainants Attorney may give unto the Defendants Attorney on the said day after the costs day a Rule, that the Defendant make answer to the complainants Bill by the same day seven night then next to come, this Rule and any must be entered into the Register; and in case the Defendant fail to make answer, by that prefixed day so entered, or if he do not otherwise satisfy the Court, by shewing sufficient cause and occasion of such his delay, then the complainants Attorney may have an Attachment against the Defendant.

Now this Writ of Attachment cannot be duly had, but where the *Subpœna* foregoing is duly obtained and served; for if the *Subpœna* be counterfeit, or if true, and not legally served, this Writ of Attachment in these is unduly obtained, and the Defendant arrested by it, upon disclosing the matter to the Court, will be discharged thereof.

An Attachment duly gotten for not appearing, may not be discharged, till the Defendant have first paid twenty shillings costs, if the serving of the *Subpœna* where upon his person, otherwise it is ten shillings, and every succeeding proccesse double so much: And upon payment hereof he is to be discharged of course: See *Caries Reports*, 32. 72. 79. 94. 105. Tothill 15.

The Husband appeared, and the Wife not, an Attachment

ment was granted against them both: Abells Case, 19 Eliz Caries Reports, 65.

So he alone appeared, and put in a Demurror in both their names, without excusing her Attachment was granted against both: Spicers Case, Caries Reports, 39.

The Defendant made Oath, he could not answer without sight of evidences, and had time given him, and then afterwards put in a Demurrer: this Writ went out against him, Pasch. 21. Eliz. Farmers case.

Where the Defendant is served with a *Subpoena*, and afterwards for not appearing an Attachment issues against him; If he do not appeare upon the Attachment, and the Sheriffe do thereupon returne (as in the like cases he doth) a *Non est inventus*, then there will issue forth against him a Proclamation of Rebellion, wherein observe, that the processe of contempt, and all Attachments in Proecess are to be discharged upon the Defendants payment, or tender to & refusall of it, by the Plaintiffs Clerk of the ordinary cases of Court, and filing of his Plea, answer, or Demurror, as the case is without any motion in Court. and if the Plaintiffe do prosecute the contempt, afterward the Defendant will be discharged with costs.

Where an Attachment is had, if the Sheriffe do not make his returne. a day will be given, and if he do not by that time, the Court will set an Amerciament upon him: See Caries Reports, 44, 77. 78. Collection of Orders, Tothill 15.

Where any party is attached, and afterward proclaimed, and he come not in, but stand farther out in contempt, in such case a commission of Rebellion may be issued forth against him for the apprehending of him, and bringing him to the Fleet (the proper Person of this Court:)

This

This Commission of Rebellion is sometimes directed to the sheriff, and some times to private persons, as in the case of *Cage and Elrington*, Trinity 38 Jacobi, Tothil 37.

This course is likewise taken against those that make not obedience to Orders or Decrees, to pay costs, or the like.

Where those private persons who are made Commissioners, having taken the person in contempt, suffer him to escape, they themselves will be committed till they bring him in; as in the case of *Sachevorell* against *Sacheverell*, Hillary Term, 18. Jacobi, Tothill 38.

If any person rescue one taken upon a commission of Rebellion, the rescuer is to be committed.

Where the Commissioners upon a Commission of Rebellion, let the party in contempt go where he listed, whereby he made an escape, they were ordered to be committed to the Fleet till they pay the Debt: See *Nellons* case against *Yelverton*, in Trin. 18. Jacob. Tothill 39.

Where the party appears not, but stands further out in contempt, a Serjeant at Arms may be sent out to take him: & if he cannot take, or that he resist, or having taken him he make an escape, & so persist high in his contempt, in such cases a Sequestration may be had of his Land, and if the Suit be for Land, a Sequestration and Injunction for the profits of the Land be delivered the Plaintiff by the Sheriff, or by other Commissioners for that purpose: as in the case of *Boles* against *Walley* and his Wife, *Caries Reports*, 38. 58. 105., 109.

We proceed now to the Bill and answer.

THE Plaintiffs Bill is in effect the same that the Declaration after appearance had is either in the Upper Bench or Common Pleas, and laies down the cause of his complaint in Chancery, being such usually as is exempt from remedy at common Law, for that they insert commonly these words in the Bill, that the Plaintiff hath not remedy at Law.

This Bill by the practise of the present times may be but in after the *Subpœna* is both taken out and served, provided it comes in within the time before limited, to prevent costs.

Upon one and the same *Subpœna* served, two Bills may be put in, provided the matter contained in them appear not to be one and the same cause; for if it do so, one of them may be dismissed with costs, and where two Bills are so put in containing severall matters, the Defendant must answer them both.

This Bill in Chancery and all subsequent Pleadings and proceeding upon it, must be succinct and short, and not lullt with repetitions of Deeds, Writings, or Records (*hæc verba*) but the effects and substance of so much of them only as it is pertinent and material to be set down, and that in brief tearmes, without long and needless Traverses of such things not traversable, tautologies, or impertinences.

It must not likewise contain any matter criminall or scandalous against the Defendant, or any other; and if it do, and concern the Defendant, he may refuse to answer it, and the Plaintiff and his counsel whose hand is to the Bill, may be punished for it, and the party grieved may recover costs against such counsell.

This ibl must be put in under counsels hands who

carefull to peruse it, if at least it be not drawne by himself, and so that it be such as is before directed, and likewise the Counsell must take care that it be such for the matter of it as the Court will allow, and take cognizance of, and then he is to signe

Where any Bill containes matter not proper for this Court to give reliefe in, the Bill will be dismissed, and so likewise will it be if there want Counsell's hand to the Bill, or if the Counsell's hand be counterfeited or disallowed, See Caries Reports, 89.

To this Bill in Chancery filed, the Defendant is to make answer, wherein many times he makes much delay: but in all cases of delay, he must upon Oath satisfie the Court of the cause of such his delay, which may be in several respects; as,

First, where the matter contained in the Bill is such, as to which he cannot give answer, without conference had with some other persons named in the Bill, or to whom the Bill referres.

Secondly, where the Bill charges the Defendant with the having of Goods or Chattells of the Complainants, to make discovery what they are; in such case the Goods being in the Countrey, and he here, he may make Oath he cannot make perfect answer to the plaintiffs Bill without sight & perusal of the Goods: So likewise where he cannot make direct answer, without sight of some Evidences or writings which he hath in the Countrey he may make Oath thereof; but in such cases, that place in the Countrey where those parties live, Goods, or Writings, or Evidences lie, must be above twenty miles from London, for else he must answer within eight dayes after his appearance, unlesse further time be given him by order.

Upou Oath made as a foresaid, then his answer will

Will be spared till the first day of the next Term following.

There may likewise Oath be made by another person, either his Solliciter, Servant, or some Neighbour to the Defendant, that he is sick, or disabled from travell, without danger of life.

Upon such Oath made as aforesaid, if the Plaintiff refuse to allow of a *Dedimus Potestatem* on the behalfe of the Defendant, for the taking his answer in the Countrey; this Court of Chancery upon motion or petition will order it, and the order that is so obtained must be carefully entred in the Registers Office, and the Affidavit upon which the order is grounded must be filed in the Affidavit Office.

Where the Defendant doth not appeare, or that after he hath made his appearance, he doth not answer within the time limited him, nor by way of excuse sheweth any the reason aforesaid, in such case an Attachment as is aforesaid is awarded against him, which Attachment must be entred in the Houte-Book of the six Clerks Office, and likewise in the Register Book, expressing the cause of the issuing of the said Attachment.

Where there is no day by rule given to the Defendant to answer, in such case the Defendant is at liberty to answer at any time during the Term.

And where the Defendant makes default within that time to make answer, then an Attachment may be sued forth against him of course, and the same with the cause thereof (as before) must be entered with the Register, (viz That the Defendant appeared, and went away without any answer.

Where the Subpœna is made returnable so neere the end of the Terme, that there cannot be a day given to the Defendant to answer: in such case the

Defendant

Defendant must at his peril answer by the same day seven-night next following the day of his appearance, although it be out of Term, for the Court of Chancery is always said to be open.

Where the Subpæna is returnable on the last return day of the Term it selfe, then the Defendant is at liberty to appear the first return of the Terme following.

But where the Subpæna is returnable upon a day certain, although the day be the last day of the Term, yet the Defendant is bound to appear and answer by that day seven night next following the said appearance.

In all cases where the Defendant either makes Oath that he can answer without Writings, Evidences, &c. or conference with some other person, or that he have a *Dedimus potestatem*, and commission to take his answer in the Countrey; the Defendant must at his perill procure his answer to be put in before the day, after the first costs day of the next Term following. unless it be in Trinity Term; then in such case it must be put in the second day after the second returne, or otherwise the Complainants Attorney may upon such his default make an Attachment against the Defendant for not answering by the day prefixed.

Where the Defendant lives in the Countrey, and hath a *Dedimus Potestatem*, granted him for the taking of his answer to the Plaintiffs Bil, it hath been formerly the course, that in case the Counsell finde cause of Plea, or Demurrer, that then the Defendant should move, or Petition to have a special *Dedimus Potestatem* by order to answer, plead, or demur, for that the Commissioners upon an ordinary *Dedimus*, had not power to take any thing but an answer.

Bur

But by the late collection of Orders it is Ordered, that where the Defendant is served with a *Subpœna* [ad respondendum.] and obtaineth a Commission to answer in the countrey, he shall without more words have the same liberty thereby to answer, plea, and demur, as he had by the Originall Proceſſe, if he could have appeared in person, See collect. of Orders, 29.

Where the Defendant doth demur, or put in any just plea which he hath, to the disability of the person of the Plaintiff, or to the Jurisdiction of the Court under the hand of learned Counsell, it will be received and filed, although the defendant doth not deliver the same in person, or by Commission.

And if the Defendant do not put in his demurror, or plea into the paper of pleas and demurrers, in the Register Office appointed for that purpose, within eight dayes after the same is put into the court, that so the said demurrer may be argued before the Lords Commissioners as it shall fall in course: and where this is omitted to be done, the plea and Demurrer is over-ruled of course, and the Plaintiff may take forth a *Subpœna* against the Defendant, to enforce him to make better answer; and in order for costs, according to the late Rules and collection of Orders.

Where a man exhibits his Bill in Chancery, and dies, the Suit depending, who ever have the interest in the thing complained for, whether Heir, Executor, or administrator, they may put in a Bill of Revivor against the Defendant; or in case the Defendant dye, the Plaintiff may exhibite his Bill of Revivor against the Heirs, Executors, or Administrators of the Defendant.

Where there is a Bill of Complaint exhibited against a man and his wife, and the matter contained in

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the Bill wholly concerns the Wife, and they
both make answer unto this Bill, and after they
have made answer the Husband dies; in this case a
bill of reviver must be brought by the complain-
ant against the woman, if he intend to proceed in
that suit; and the reason is, for that the woman shall
not be constrained to abide by that answer, which
she together with her Husband, or solely as Wife
unto the man, hath formerly made to the complain-
ant, for that she was at that time under coverture.
And in case she survives her Husband, and conti-
nues possessed or seised of the thing in controversie,
in statu quo, she may as she shall think fit make a new
answer, & shall not be bound up or concluded by that
answer which she made during coverture, or sole-
ly as Wife unto the man; and yet if she thinks fit, she
may stand to that former answer of hers, and pro-
ceed accordingly in that Suit.

Where the Plaintiff exhibits his bill in Chance-
ry against a femme sole, and she appearing makes
answer unto the Bill, and afterward marrying, she
comes under coverture, the Suit depending. In this
case the Plaintiff may proceed against her and her
Husband, and shall not need any bill of reviver: and
her Husband shall be bound by that answer, which
she made whilst a femme sole, for that she shall not
advantage her selfe by her own act.

Where on the other side a femme sole Plaintiff ex-
hibits her bill, and the Defendant make answer un-
to it, and afterwards she intermarrieth, here there
can be no further proceeds by the Husband and
Wife within a bill of Revivor, because she hath as-
signed her suit by her own act of marriage, of which
the Defendant may take his best advantage.

Where

Where the man and the Wife exhibite a Bill Complaint, and to this the Defendant answered, and the man dieth, the woman shall be at choice whether she will exhibit anew Bill, or proceed upon the Bill by her Husband and her self formerly exhibited.

Where there are two seized of joynt Estates, where they are Executors of one Will, or Obligees or Obligees, and they prefer a Bill in Chancery, which the Defendant makes answer, and after one of them dye, here the survivor may proceed in his suit against the Defendant, and shall need no Bill of Revivor.

Note that the Bill of Revivor must pursue the Bill exhibited; for where there is any variance between them, the Defendant may be discharged, and the Bill will be dissolved.

Where there are Administrators, *Durante minoritate* of an Infant executor, in the nature of a Guardian, and they sue on the Infants behalfe, and the suit depending, the Infant comes to age, here seems there needs no Bill of Revivor.

Where the Complainant hath exhibited this Bill of Revivor, and hath procured thereupon Subpoena to be served, he will be upon this in the same case, as the Predecessor was, when the Bill was crued, unless some good cause to the contrary (such that he is not Heire, executor, nor hath the like interest, &c.) can by the Defendants answer be shewed.

Where a man doth willingly refuse to answer, and stand out of the Processe of contempt, the Court will take the matter of the Bill *Pro confesso*, and decree it, Tothil 69.

If the answer be good to common intent, the Plaintiff must reply & prove the matter if he can.

insist upon insufficiency of the answer.
An exception can be taken to an answer after a replication put in, for it is then admitted to be good, before replication it may be excepted against.
Where it is excepted against, the causes must be shown in writing, and deliverdd into the Plaintiffs Attorney or Counsel, the same Term the answer comes in, or within eight daies after; and if he answerd it in eight days, he is to pay no costs.
Where an answer is excepted against to be insufficient, it is usually referred to a Master, to consider of the exceptions, and he to certify the Court whether the answer is insufficient.

If the Master certify it to be insufficient, then the Plaintiff may take out Process for cost, and the Defendants answer is not to be received till he hath paid the costs.

The first answer being returned insufficient, the Defendant must pay forty shillings single costs.

If it be an answer that came in by commission, and is insufficient, he must pay fifty shillings.

The second answer insufficient payes three pounds. The third five pounds costs, and you may have a subpoena both for your costs, and to make a better answer.

But in these cases of exceptions the insufficient appearing in the same exceptions, are the point to be insisted on, and no new exceptions may be moved.

Where the Master upon reference to him finds the answer to be sufficient, and accordingly certifies, where the Plaintiff must pay forty shillings costs.

If the exceptions to an answer be put in after the term, there shall be time given to answer them until the fourth day of the next Term, unless the Court hasten it.

If the answer come in by Commission, and be good, no new Commission will be admitted but on Oath of the inability of the person, and his payment of fifty shillings costs as before.

Where a cause goes to hearing upon Bill and answer, the same must be admitted to be true in points, and no other evidence is to be admitted, what is matter of record, to which the answer doth refer, and which is provable by the record in *Carries Reports*, 78. 30.

Concerning Demurrers and Pleas, to these Rules following.

First, A Demurrer is alwaies where there is matter defective contained in the Bill, or where there is forraign matter.

The Plea of forraign matter may be of two sorts. Either where it is to the jurisdiction of the Court, to the disability of the person, as where the Plaintiff is outlawed or excommunicate, or where there is in this or any other Court a Bill or suit depending for this very cause.

Or it may be that the cause hath been formerly dismissed this Court or the like.

Or if the matter of it appeare upon Record, may be put in without Oath, otherwise not.

In case it be a Demurrer, it must express the cause of the Demurrer, yet other causes may be insisted on at the time of the determination thereof by the Court.

If the Demurrer be over ruled, the Defendant shall pay five Marks costs, and where it is allowed the Defendant shall have no costs.

If one plead a Plea that is insufficient, and so over-ruled to be, as where it is an Outlawry pleaded, & it is not a good Plea, hee must pay five Markes costs.

An Outlawry is not to be Pleadèd, unlesse you plead the Record, Subpede sigilli.

A Plea of Outlawry, if it be in a Suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed, and will be in force to hinder all the Plaintiffs proceedings, till it be reversed.

But when it is reversed, the Plaintiffe upon payment of twenty shillings costs, may upon a new Subpoena served, put the Detendant to answer the same Bill.

Where the Plaintiffe conceives the Plea for matter or manner naught, he may put it to the judgement of the Court.

Where a man Pleads a former suit, he need not set it down with the Register, but it shall be referred to a Master to certifie (which must be done within a moneth upon the Plaintiffs procurement.) And if the Master do certifie against the Plaintiffe, he must pay five shillings costs: If there be no report within a moneth of filing the Plea, the Bill will be dismissed of course, with seven Nobles costs.

If the Demurror to any Bill be put in upon any slip or mistake in the Bill, the Plaintiffe of course laying down to the Attorney twenty shillings costs, may amend his Bill within eight dayes after the demurror put in, but not after that time.

If the demurror be admitted by the plaintiffe to be good within eight dayes after the filing of it, and he doth pay the Defendant his Attorney or Clark in court forty shillings costs, then the defendant shall not need so attend his Demurror, but the Bill shall stand.

stand diſmiſt of courſe without Motion, unleſs both ſides agree to the amendment of the ſame, but ſuch diſmiſſion it to be no bar to a new Bill to be exhibited by the Plaintiff.

Where the Plaintiff finds ſufficient cauſe for an order in the answer, he may go to hearing thereupon without further prooſe, (of which he ſhould be well adviſed) in which caſe he muſt procure his Attorney to preſent the ſame in courſe, to be ſet downe to be heard upon Bill and answer: But in caſe the Court ſhall not find grounds to make a decree or ſinall order, the Bill ſhall be diſmiſſed with coſts, or the Plaintiff admitted to reply, if he deſerve it, firſt paying downe five pounds coſts, within four dayes after ſuch hearing, then the diſmiſſion to ſtand, and the concluſion of the order upon hearing is to be penned by the Register accordingly, and then ſuch diſmiſſion ſhall be a good Plea in Bar of any new Bill for the ſame matter.

Where a Plaintiff proceeds ſo far as to prooſe, and upon the hearing it clearly appears the Plaintiff might have had full reliefe upon Bill and answer, albeit he be relieved in the cauſe, yet he ſhall pay coſts. See more fully of theſe things in the collection of order, 16. 18. Caries Reports, 39. 87.

Replication, Rejoynder, and Sur-rejoynder comes next to be handled

THE replication is the ſpeech of the Plaintiff, in way of reply to the Defendants answer.

The rejoynder is the Defendants answer, to the Plaintiff replication.

The Sur-rejoynder is the ſecond defence to the Plaintiffs action, oppoſite to the Defendants rejoynder.

First

First, the Replication must be short, relating to the substance of the Bill, and it must avoid superfluous and criminous matter.

Secondly, the Replication must affirm and pursue the Bill, and confesse, and avoid, traverse, or deny the answer.

Thirdly, the Rejoynder, that must pursue and confirm the answer, and must sufficiently confesse or avoid or traverse every material part of the replication.

Fourthly, no new matter must be put into the Replication, and so much matter only is necessary to be there, as will avoid the matter of the answer.

Fifthly, if upon the Answer there be so much confessed, that the Plaintiff need not to draw into pleading, and prove all the points, he must see to it, and reply, and go to proof only in those particulars in question, and necessary to be proved.

Sixtly, When the Defendant doth demurr or disclaim to any Bill exhibited against him, the Plaintiff cannot reply: And if the Defendant in those cases be served with a *Subpoena ad rejugendum*, having before made no other answer, but a Demurrer or Disclaimor, he shall have costs for unjust vexation.

Where the case is such, that the parties cannot come to issue, by reason of some new matter disclosed in the Defendants Rejoynder, that requires to be answered unto, the Plaintiff may sur-rejoyn to the Rejoynder, and the Defendant likewise to the Sur-rejoynder, if there be cause.

As for the time of the Replication to be put in after the answer, you are to observe that the Plaintiff

hath time for all this Term, and all the next term and untill the beginnig of the second Term following to be put in his replication.

The next term after the answer is put in, the Defendant may give the Plaintiff rule to reply: & if such rule be given, and the Plaintiff reply not, costs will be given against him.

And where he gives no rule, and the Plaintiff doth not reply the second term after the term the answer is put in, the Bill will be dismissed with the costs of course.

But in case the Plaintiff doth reply, and that the Replication be in court, the Defendant can have no costs.

In case where the Complainant hath replied, the Defendant may if he will rejoyne *Gratis* to the replication, and force the Complainant to joyn in Commission.

Where the Plaintiff intends to go to commission, he must serve the Defendant with a *Subpena ad reju-gendum*, before he can have commission to examine Witnesses, & upon the return of the *Subpena ad reju-gendum*, and Oath made of the serving of it; the Plaintiff may by entring Rules force the Defendant to re-joyn and joyn in Commission, or go on to the Examining of Witnesses without him; for having given him seven dayes to rejoyne, if within that time he refuse to do it, he cannot do it after.

In such case where the Defendant is served with a *Subpena ad reju-gendum*, and does not upon the Plaintiffs Clerks Demand to the Defendants Clerk deliver Commissioners names by the end of the Term

term, wherein this *Subpœna* is returnable, there the Plaintiff may without motion or Petition, give names, and take a commission *Ex parte*: See *Willes Reports* 111. and *Collection of Orders in Chancery*.

*The manner of joyning in Commission,
and Executing of it*

IN the joyning of this commission to examine witnesses, the complainant must first name one commissioner, unto whom the Defendant may give general Exceptions.

The Defendant is to name the second.

The Complainant the third. And

The Defendant the fourth.

The Plaintiff is likewise to have, first the taking out, and carriage of the commission, as oft as any is sued out, and he or his Commissioners must give notice either in person, or by a note left in writing, at the place of the usuall abode of the other party, fourteen dayes notice to him of the time & place of executing the commission; and if there be default then made by the Plaintiff or his Commissioners, in the Execution thereof, he must pay the Defendant such costs as he upon his Oath shall make appear he was put to in the intending of the commission, and the Plaintiff must renew the commission at his owne charge, and the Defendant shall have the carriage of it. And so on the other side shall the Plaintiff have, if the Defendant have the carriage of the commission, and if it be lost by default of this side.

But where it becomes void by any Error of the Clerk in the making of it, the costs shall be born by him, and that side for whom it was taken out.

Where the Defendant hath the carriage of the Commission, he must give notice to the Plaintiff, as is before directed, and if such notice be not given, either all the examinations will be quashed, or otherwise the Court will grant to the other side a Commission *Ex parte*.

Where there hath been publication, there no commission can be granted or renewed for Examining Witnesses without speciall Order.

Where a Commission hath been to examine witnesses, without reference and certificate upon it, it cannot be discharged upon a bare Petition.

Where a Commission is taken out by consent, and the one side at the speeding of the commission deposited in no Interrogatories, nor examine any witnesses (unlesse upon a motion, and by order of the court) he shall be never after admitted to have a new Commission.

Where the Defendant had witnesses to examine and they being served did not appear, but make default, here a new Commission will be granted to the Defendant, *Earles Reports* 91. 45. *Torchil* 3. *Collection* of Chancery Orders.

*Touching the Choice of Commissioners,
or Examiners, and the Exceptions
against them.*

First, they must be men indifferent.

The Exceptions usually taken against them are, that he who is named Commissioners of Kin-

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ded, or allyed to the party for whom he is named, and so may very well be deemed to side with that party.

Or that he is Master to the party for whom he is named, or that he is Land-lord to the party, or that he is of his Counsell, or Attorney for him, or one to whom he is indebted, or one that hath a Suit with the adverse party:

The Commission being to be fit upon at the time and place appointed, the Commissioner must call the Witnesses before them, where if they appear not, an Attachment issues against them, unless it be in such case where the Witnesses are impotent, and then a commission shall be awarded, to examine them where they be, but usually they will have costs before they answer.

When the Witnesses appear to be examined, the Commissioners and Examiners must examine themselves, and not leave so weighty a business to the trust of their Clerks, or others to do it.

They are to hold the witnesses to the point insisted on.

They should examine them but to one Interrogatory at a time, and so that answered first, and at one time.

They are to take what comes from them in answer to what they are examined, and not upon their sight of all the Interrogatories, to let them set it down themselves.

After they have been examined, upon better thoughts they may suffer them to attend their Examinations. They ought not either to ask them idle questions besides the matter of the Interrogatories, nor set down impertinent answers.

They are to let down truly their sayings in Parchment, and that done, they are to set their hands to

very Schedule Examination, and send them up into the court as they are taken, with a certificate.

Where the Commissioners meet with any obstruction in the work, they must certify that also.

After the commission is duly executed, and that it be returned up, one of them must deliver it in court, or they must send it by one that must make Oath that he received it from one of their hands, & that it is not altered to his knowledge.

If any one of the Commissioners commit any misdemeanor about examination, the party grieved, upon Oath of it, may have an Attachment against him, and cannot have a commission to examine it upon the certificate of the other Commissioners.

Where there is a disagreement of the Commissioners, or where there is any other speciall cause that obstructs the commission, they may have an Examination sent downe on purpose to do it: See *Caries Reports*, 30, 31, 40, 47, 80, 81. Tothil 189.

The Interrogatories to examine Witnesses must be succise and apt.

When witnesses are examined in court upon a Schedule of Interrogatories, you cannot examine the same Witnesses upon putting in new Interrogatories.

Witnesses may be examined as well by Examiners in court (in case they live in or neere the Towne) as by commissioners in the countrey.

Either party, as well Plaintiff as Defendant, after answer put in, untill publication be past, may examine what witnesses they please in court, before one of the examiners; but before answer, and after publication, no Examination will be allowed, but by speciall order, some speciall cause being shewed.

Notice

Notice must be given both of the names and dwelling places of the persons examined, in all cases of Examination.

After an order for publication, and that delivered to the examiner, no witness may be examined in Court, though he were sworn before: *Caries Reports*, 27. 8. 93. *Tothil* 189. 190. 192.

Touching Deposition of Witnesses.

NO abstract, or copy of the Deposition of the Witnesses is to be delivered till publication be past.

No deposition of witnesses may be suppressed upon a bare petition only, without references and certificate upon it.

Where there are severall causes which are meerly crosse causes between the same parties, and touching the same matter, there the Deposition of Witnesses in the severall causes may be used at the hearing of both causes (being heard together) without any motion.

Where Deposition are regularly taken, they may not be suppressed by motion; but the Depositions of Witnesses appearing to this court to be gotten by practice, may by order of the court be suppressed, Deposition of Witnesses taken in this court, may by Order of the Court be made use of in any other Court: *Caries Reports*, 35. 56. *Collection*, of Chancery Orders.

He that will examine Witnesses (*In perpetuam rei memoriam*) to preserve a testimony, he must first exhibite his Bill, and shew his title to the thing, and that the witnesses to prove it are old, and not like to live long, whereby he is in danger to lose it, and

then pray a commission to some Gentleman of credit in the Countrey to examine them, and a *Subpoena* to the parties interested, to shew cause if they can to the contrary.

If the party interested being duly served within 14 dayes shew cause, the Plaintiff must desist; if he cannot, he may go on alone, if the other will not joyn with him, as he may if he will, and then 14. dayes warning is to be given for Execution.

The Court in this case will appoint commissioners, and give Articles to examine upon, or they may be examined in court by an Examiner.

None but aged and impotent persons may be examined upon this commission.

Where the Defendant takes exception to the proceedings in speeding the commission, as whether he did appear or not, and whether Oath were made before them of notice given to him of the time & place of execution thereof, in such case the Commissioners must certifie up with the commission the exceptions the Defendant so took.

This testimony taken upon this commission, is not to be published while the witnesses live; but in some cases, as either by consent of the parties, or upon Oath made, that either the Plaintiff hath some trial at Law, wherein he shall heed it, and that the Witnesses are not able to come to the place, or otherwise by order of the Court, and then the commission is to be opened by a Master, and to be considered of, and afterwards it may, if the party will be exemplified, and may by order of this court be given in Evidence in any other court.

These Depositions thus taken, shall not be made use of to be given in evidences against any other, but the Defendant who was warned to defend it, his heirs or Assigns, or some other claiming by, or under him,

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by some Interest which accrued unto him, after the Bill preferred; Tothil 189. 190. 191. 192.

Where both Plaintiff and Defendant have examined what Witnesses they please, and are ready to go to hearing, then either of them must first give the other a rule for publication; if it be the Plaintiff that gives the rule, then thus, (Day is given to the Defendant of publication upon the Commission joyned) and if the Defendant give the rule, then on the contrary thus, (Day is given to the Plaintiff for publication upon the Commission joyned.)

The day so given in one week, which being expired and no cause shewn to the contrary, then publication is granted.

After publication so granted, neither party can examine witnesses, unlesse it be by speciall order of the court, which is not granted without an Oath made, that the party which requireth the same, nor any of them hath seen, or been made privy to any Examinations of any the witnesses formerly examined in this court, by either of the parties, and some good cause be shewn either by Oath or Certificate of Commissioners, why the party could not get his said Witnesses examined within the time limited for their Examination; in which case sometimes the Court giveth order to examine Witnesses by a time prefixed, with this proviso, that the party shall not in the mean time see the said former examination.

Touching

*Touching setting down the Cause
for hearing.*

After Publication had; the Plaintiff, or in his neglect, the Defendant may procure a day of hearing of course to be set down by his Clerk, at the end of the Term, when the Lords Commissioners do set down dayes for hearing the next Term.

The dayes must be set down according to their priority of Publication.

No Cause must be presented for hearing, the same term that Publication doth passe.

All Proceſſe to heare Judgements must be returnable six or seven dayes before the day of hearing, except it be in the beginning of the Term, when the time will not bear it, and the VVrit must have on the back of it the very day of hearing.

If the Plaintiff appeare not, the Defendant is to be dismissed with costs; Caries Reports 45. collection of Orders in Chancery.

*Touching De. rees take these in-
ſuing Rules.*

Every Decree must be drawne up as short as with conveniency it may, and not recite the Pleadings largely, but the sum of it briefly.

If the Decree be made before the Master of the Rolls, or before any Judges, it being drawn, must be first signed by them, and after by the Lords commissioners, and then it must be inrolled.

The Decree must be signed and inrolled before the first day after the next Michaelmas, or Easter Terme after the making of it. Where

Where the Decree concerns Lands or Leases it must be entred into the Registers Docquet Booke, within sixe Moneths after the making of it, otherwise it shall not prejudice the Purchasors of the Land.

No Decree shall be binding to any but those who are served with Proccesse, Ad audiendum Judicium, or that did appear Gratis.

The Purchasor that comes in by conveyance, Bona fide, from the Defendant before the Bill exhibited, and that is no party by Bill or order, shall not be bound up by any decree.

But where a man becomes a Purchasor (Pendente lite) and without any colour of privity, or allowance by this court, there it shall regularly binde him; yet in such case, if there have been any intermission of the Suit, or the court be acquainted with the conveyance, the court is to give order in it.

No Decree made by this court can be crossed, altered, or explained upon a bare Petition only, and yet hereby it may for some speciall reasons be stayed for a while, till it can be moved in Court.

A decree of this court once inrolled cannot be reverted or altered but by a Bill of Review, unless it be in case of miscarriage, where the case is demonstrative, and then it may be done by order.

A decree will bind the persons; for where any doe refuse to obey it, this court will imprison him untill he do conform.

A decree of this court doth bind the right and title to Lands and goods; for this court by their order of Sequestration and Injunction doth dispose of the possession thereof for ever to him the court judgeth to have right thereunto in conscience.

Where a decree is to be made upon a pretence
of

of Equity against the Judgement of another Court, this Judgement is first read, and then the Decree is not to vacuate the Judgment, but to order the unreasonable party.

The course of the Court to enforce Obedience to their Decrees, and to punish the Breach of them.

First they are to serve the party with the Decree it selfe, under the Seal of the Court: and if he yeeld not obedience unto, but stands obstinate, they then proceed to take out of the Court all the Processes of contempt against him one after another, and the party being taken, is to be straitly imprisoned, and not to be let at liberty till he yield obedience to it (that is to say) That he perform that part of the Decree which is presently to be done, and give security to perform that part which is to be done for the future.

Also the Lords Commissioners for his contempt may Fine him what they please, and afterwards Excommunicate.

Where the Decree is for Land, and the party remain obstinate and wilful after his imprisonment, the Court doth use to grant an Injunction for the Possession; and this being disobeyed after it is served, and Oath made thereof, the Court doth in that case grant a Commission to some Justices, and if need be a Writ of Assistance to the Sherif, to put him in possession: See Caries Reports, 23, 34, 36, 37. Tothil 56 & 57. Collections of Orders in Chancery.

Where this Injunction is granted for possession of the Land, and the party sits out all the Process

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of contempt, and cannot be found by the Serjeant at Arms, or make a Rescue, a Sequestration shall be granted of the Land, Tathil 107.

This Sequestration is granted sometimes as wel of the Goods as of the Profits of a mans Land, and that for his wilfulness in standing out in contempt, and disobedience to the Court; aswell where it is for discharge and payment of debts and duties, as wherethe Decree is for the payment of a sum of mancy, &c. Tothill 175, 176.

Concerning Contempts.

IN case of contempts upon force, or ill words, used upon serving of process, or other words of Scandal, to the Court, if they be proved by *Affidavit*, the party forthwith upon motion will be committed, if the words spoken deserve it.

For other contempts against the Orders and Decrees of the Court, take as follows.

First, an Attachment goes forth upon *Affidavit* made of the contempt.

Then the party being taken is to be examined upon Interrogatories, which is usually upon motion referred to one of the Masters in the Chancery.

The contemtor coming in *gratis* or upon Process, should give notice to the clerk of the other side of his appearance; and if then there be not Interrogatories put in within eight days, or being examined, if no reference be of the Examination, nor commission taken out by the other side, or Witnesses examined to prove the contempt in a Month: the contemtor shall be discharged and shall recover costs taxed by a Master without any motion.

If after he hath appeared upon the contempt, he depart not examined, he must stand committed till he be examined and cleared; and if it be found, he must clear it, and pay costs ere he be discharged.

Such as stand committed for contempts upon Attachments, or commissions of Rebellion, must enter into bond to attend from day to day, not to depart without leave of the Court. *Caries Reports* 9.44.70. 71.82: *Collection of Chancery Orders*.

Imprisonment upon contempts for matters past, may be discharged of Grace, after sufficient imprisonment, or it may be otherwise dispensed withall in such case.

But where the Imprisonment is for non-performance of any Order of the Court in force, then the person so in contempt ought not to be discharged, except he first obey, only the court may dispense with the contempt for a time.

Concerning Bills of Review.

A Bill of Review shall not be admitted, except the Decree be first obeyed and performed.

No Bill of Review shall be put in, except the party that prefers it enter into a Recognizance with sureties for the satisfying of costs and damages for the delay, if it be found against him.

Where a cause is dismissed upon full hearing, and the dismissal signed and inrolled, it cannot be retained again but by a Bill of review, and that in some special cases.

No Bill of review is grantable but upon Error in Law, appearing in the body of the Decree itself, without averment or further examination of any

any matter or fact which might have been had at the time of the decree, unless he shew some new matter which hath risen in time after the decree, whereof the Plaintiff could not have advantage of before; and then upon oath made that there is a discovery of such new matter, this Bill (by leave of the court) may be exhibited.

But he that so obtaineth this Bill must first give security by Recognizance to a Master, as is before directed.

Where the decree is to yeeld the possession of Land, deliver Writings, or to pay Money, he must first perform that before a Bill of review; But if the Decree be to extinguish a right, convey Land, release a Debt, acknowledge Satisfaction, or to cancell records, or Evidences, or the like, it may be stayed by the order of the court, till the Bill of Revivor be determined.

Now witnesses which either were, or might have been examined upon the former Bill, shall not upon this Bill of Revivor be examined to any matters: collection of Orders in Chancery, Totbil 173.

Having now gone through the generall proceedings of Chancery upon Bill and Answer, there are some things which in some cases are essentiall to those proceedings, which take as follow; and first concerning Injunctions

THis is looked upon according to the general acceptance, as that which makes stay of Proceedings at common Law, although in many cases it is likewise

likewise to the end to gaine the possession of Land in some cases it proceeds, and in some cases it is subsequent to the decree, and sometimes by writing, and other times by word of mouth, as when the party who is to be inhibited, is present in court.

Where it staves proceeding at Law, in some cases it gives leave to go to tryal & Judgement, but staves Execution.

Where the matter of Law is tryed, it bars them from Judgement as the cause may be.

Or where there is a Judgement, and that executed, it will stay the mony in the Sheriffs hand, after the party is arrested at Law for the mony.

This injunction is commonly procured either upon some Writing, or matter of record plainly appearing; or upon a very old debt that hath slept long, Creditor and Debtor being both dead; or in such cases where the Defendant doth not appear, but fits an Attachment, or if he appears, either answers not the Bill, or confesses so much thereof as is sufficient.

Where either the Defendant is beyond the Sea, or being in the Kingdome, doth absent himselfe, so that he cannot be served, or whete upon any pretence he hath gotten time to answer, the court doth usually in those cases grant an injunction to stay suit, till the Defendant doth appear.

Where there is a Commission granted to take an answer in the Countrey, an injunction will be granted to stay the Defendants suit at Law, (if any be) till the answer come in, and of this the Defendant must take notice without any serving of it.

Where there is a verdict at common Law in an Action of Debt, and a Bill be afterwards exhibited for reliefe, here the mony must be deposited in Court, before the court will grant an injunction, unless in some

me cases where some speciall matter in Equity appears by the Defendants answer, or in some former Decree.

Where a person priviledged in this Court is sued elsewhere, they stay that Suit by this Injunction.

Where Timber is unjustly telled, Ancient Meadow ground plowed up, ancient Pastures that have not been plowed up in twenty years before, or for the maintenance of inclosures kept in for 20. years before, there is grantable according to the Case.

Where an Injunction is granted to quit a possession, it is granted of houses and Land onely, and not of a Rent or such like thing, and it is not to be granted before the hearing of the cause, unless upon an oath, that the plaintiff was in possession at the time of the Bill put in, and then onely of that possession he had then, and three years before; and at the time of the motion, and not to be extended to the possession of those from whom he claims: And this shall not hinder the Defendants Suit in Law, making of a Leale, taking of a Distresse, &c. And this Injunction where the plaintiff delays his Suit is to be dissolved again.

Where it is to stay or remove a Suit by *Certiorare*, Bond must first be given that the Bill hath matter sufficient in it to beare it, and shall be proved true within fourteen dayes after he hath the writ; and this if he do not in this time, after certificate or his neglect from the examiners, it shall be dismissed with costs, and a *Procedendo* granted.

Where the injunction is to be obtained by motion for matter in the answer, there the Counsel must put the case in writing to the Court.

Where it is granted upon the merit of the cause, or upon speciall cause in Equity, it is to stand till the hearing, unless the Plaintiff delay his Suit.

This Injunction must be served either on the
Cc party

party himselte, his counsellor, Attorney, or Solicitor. &c. as the case requires, and the manner of deserving it is much like the serving of a *Subpoena*,

A bare petition only will not dissolve this injunction, nor if it be had by motion is it to be dissolved without motion of the adverse party.

Where an injunction is granted till the answer be put in, and no order be made to continue it, within fourteen dayes after the answer is come in, in this case it shall be dissolved upon the registers certificate thereof only; and if no motion be made that Term, or at the next generall seale after the Term, to continue it for insufficiency of, or matter contested in the answer, it is dissolved of course; so where it is to stay a suit at common Law, and the Plaintiff doth not proceed for three years together.

Where the injunction is disobeyed (if you would force obedience thereunto) upon Oath made thereof, all the Proccesses of contempt are to go out against him, on easter another, and being taken, he is to be imprisoned till he do yeeld obedience to it, or give security to do it; nor is he to heard in the principall case, till he yeeld obedience in every thing in the Injunction, Tothil 157. Caries Reports 111.
113r

Touching dismissal, tak the se things following.

THIS is prayed by motion, and had upon Plea to the Bill, or hearing of the cause, and not after Examination of witnesses before hearing, but upon a discontinuance of prosecution, by motion and order of the Court. Where

Where the Plaintiff discontinues his prosecution, after all the Defendants have answered, above the space of one Terme, the cause is to be dismissed of course, but after a Replication put in, it cannot be dismissed without an Order upon motion.

Where a cause is dismissed upon a full hearing recorded and certified by the Lords Commissioners, it cannot be again retained, nor a new Bill admitted, but where there is new matter.

Where the Bill is duly dismissed of course, or by order, no motion will be heard to retain it, till the costs assessed upon the dismissal be payd, & certified from the Attorney on the other side, that it is done.

No dismissal, or Retainer upon a dismissal will be granted upon bare petition only.

In cases of dismissal not upon a full hearing, to a new Bill this may be pleaded.

But for the causes of dismissal, the Court will retain and dismiss as it doth see cause: see Collection of Chancery Orders, aries Creports 34. 43. 74. 76. 110.

Touching References and Reports, take as follows.

WHere there is a Demurror to the Jurisdiction of the court, there no reference may be had to a Master upon it, but it must be heard before the Lords Commissioners themselves.

After examination of Witnesses is past, there can be no reference had to a Master to end and determine, unlesse it be in case of near kin, poverty, or consent of parties.

A reference of the State of the case is sparingly granted, unless where there is consent of the parties.

The examination of Court Rolls, is to be by reference, but there it must be by two Masters at the least.

No reference shall be made of the insufficiency of an answer, without allegation of special causes: See the collection of Chancery Orders.

The Reports of the Master upon the reference must not exceed the Warrant of reference, which is the Order of Court by which it is referred to him.

After the Master hath seen the Order, he usually grants out a Warrant, which is shewen unto the other side, whereby he gives notice of the time of his hearing the cause, where the other side with their Counsellour, or Solicitor, may as they see cause attend.

The Report it selfe is usually brief, and with some opinion, if the cause be not very doubtfull, and if so then it must be set forth the speciall Case.

No Order can be had to confirme the Report, till it be first filed with the Register, under the Masters hand, and a day given to the other side, for seven dayes at the least, to speak to it in Court; and yet where it is not to ground a Decree, and it be positive, it is so stand, and Proccesse may be taken out for the performance thereof, unless the adverse party upon notice thereof, do within eight dayes after (if it be in the Term time) or if at the generall Seals for motions, or if after within four dayes of the beginning of the next Term, get it controlled.

Where there is an appeale to the Court from the Report of a Master, the party that doth so appeale must deposite forty shillings with the Register, and a day will be set for the Judgement of the Court and
if

if the Court do adjudge it against the Appellant, the other shall have the forty shillings, and what more the Court shall judge fit; if otherwise, the money shall be restored: See Collection of Chancery Orders.

The matters chiefly under reference, are either insufficient answers, or matters of account.

Where the Master upon a reference to him reports the Answer to be insufficient, the Complainant may take out two *Subpoena's* against the Defendant, the one for twenty shillings costs, and the other to make a better answer.

Touching Orders, and the Register that draws them.

THE Registers being sworn, do sit in Court, and take notice of all Orders the Court doth make, and take short Notes in their Booke, by which to draw up some more full Remembrance of that which passed in Court.

Where any order shall be made, and the Court not informed of the last material Order formerly made, no benefit shall be taken by such Orders, as being surreptitiously procured; and to that end the Register doth mention the last former Order in the present Order.

An Order made out of the generall Rule, must set down the special reasons of it.

No Order shall be explained by Petition, but by publick motion, both parties being heard.

No Order but in fall Orders and Decrees may be received to be entred after eight dayes after the pronouncing of it, that day being excluded.

The Register is to keep copies of the Orders he

doth deliver, and his hand is to be put to the order before it be entered.

The Register after a hearing, and reference to a Treaty is to set down in the order of Reference, what was the opinion of the court, unless the court do direct it to be drawn otherwise.

All Orders drawn up by the Register are to be entered under the Registers hand in due time.

The Register is within ten daies after the end of every Term to certify the commissioners, what References depend in the hand of any Master, and how long they have depended, that so if any of them have depended overlong, the court may require an account thereof from the Master, and quicken him to a speedy dispatch.

Touching Suits in Forma Pauperis,

TH E counsell and Attorney assigned for *pauper* may not refuse, but must attend their business, unless they shew cause to the court, why they cannot so do.

They must always have their Order of Admission with them, and first move that before any other motion; and it hinders not, but that they may, if they have any other motion, make it afterward.

Where the Register finds that he is not a *Pauper*, he shall not draw up any Order upon the second motion; but the *Pauper* shall lose the Fruit of it.

No counsellour, Attorney, or Officer of the court appointed to be for a *Pauper* by the court is to take any thing of, or contract for any thing with him, and the *Pauper* that can be proved so to have

have given or contracted, is to be dis-paupered for ever.

If a Pauper sell or contract for his Suit, or any part of it, his Bill shall be dismissed, and never after retained.

No proceſſe of contempt shall go out for a Pauper, untill it be signed by the six Clerks, who deale for him, and he must see there be cause for it.

The course to obtaine the Admission is by way of Petition, either to the commissioners of the great Seal, or to the Master of the Rolls; who underſcribe it, the party having made oath that he is not worth five pounds, and assignes him Counsell and Attorney.

His Admission must be shewn in the severall Offices, where he hath occasion to passe.

Touching Petitions for the avoyding of the multitude of idle ones, drawn by persons altogether ignorant of the practice and course of the Court, of the true state of the Petitioners business, it is directed, that Petitions before they be presented to the commissioners of the great Seale, or master of the Rolls, be shewed to that six Clerk, who is the Petitioners Attorney in Court, or to his Deputy, and by him approved and subscribed; and for this no fee is to be taken; but this not to be understood of Petitions advised and signed by counsell: Nor of Petitions containing any matter of complaint against the Attorney, or his under-Clerk.

Touching Affidavits.

Affidavits are most generally made before Masters of the Chancery, but where it is for the set-

ving of a *Subpoena*, they are sometimes taken and certified by others.

An Affidavit may not be taken against an Affidavit, for if it be, the latter is not to be used.

An Affidavit ought not to be taken tending to the prooffe or disproofe of the matter in question: Nor may any such matter be admitted, to be colourably inserted into an Oath made of the serving of Process: See more to this purpose, *Caries Reports* 63, 69, 81, 82, 84, 85, 98, 99, 103.

The way of proceeding against a privileged Person.

A Declaration against a privileged man for Debt or any thing whereof the Court holdeth Plea, is to be delivered to one of the sixe Clerks, whom the Plaintiff maketh his Attorney, and he thereupon giveth a day (as it is commonly tearm'd) which is a week viz. the whole next return) to the Defendant to answer, which day entred in the sixe Clerks Cost Book in this manner, (*Roberts against Johnson*) A Day is given from the day of Saints Michael in one Month, in a plea of privilege.

Day being thus given, the Declaration under the Attorneys hand is sent over to the Petty bag, by one of the sayd Attorneys Clerks, which Declaration is briefly entred by one of the Clerks there, and likewise the day that is given to the Defendant to answer in a Roll there, which is called *Rotulum remembrance Parvæ bagæ*, at which day by the course of the common Law, if the Defendant Plead not, he is fore-judged the court, but the course of the chancery hath been of late to allow the Defendant a day

of Imparlance, that is, day till the next return after the return given him to answer, which is in this manner

The Defendant retaineth one or other of the six Clerks, who imparleth for him, which is done in the six Clerks costs book in this manner, (Roberts against Johnson) Imparlance untill the morrow of all-Souls, at which day it is sent over to the petty-beg to be entered into the forelayd Roll next under the sayd Declaration.

The sayd day of imparlance being past, another day, *V. delict.* commonly five dayes in a week (which is commonly called peremptory day) is given by the Plaintiffs Attorny and entered into the petty beg, as aforesayd, to the Defendant to plead, or else judgment is to be entered against the Defendant.

If the Defendant plead, his plea is delivered by his Attorny to his Plaintiffs Attorny, and then if the Plaintiff will proceed to a Tryall, he is to joyn up the Issue (if he may, for in some cases he cannot) or else the Plaintiffe is to reply, and to give the Defendant a day, viz. a whole Terme to joyn up Issue, which is given and entered as the day to answer: And if the Defendant by that day joyns not up the Issue, Judgement is entered up by *Nihil dicit.* And it is to be noted, that after a peremptory day given, the Defendant cannot pray Oyer of the Bond and Condition, or such like, as of late is used for a meer delay. But if the Issue be joyned up, either by the plaintiff or Defendant, then is the Record made up, and the same with a *Venite facias* is sent into the Kings Bench to be tryed, as an Action there at Issue, and upon judgement there, Execution is thereupon there awarded.

But if the Defendant refuse or neglect to imparle at the day given him to answer or to plead, or he
may

may plead at that day if he will, then is judgement entred against him, and Execution awarded.

Upon Judgement either by default, or Nihil dicit, some of these Writs of Execution are awarded; if for debt, the Plaintiff may have an *Elegit* by Westminster. 2. Chap. 18. or else a *Levari facias*, or *Fieri facias*; and if the Plaintiff cannot levy his Debt and Damages, then he shall have a *capias ad satisfaciendum*, either for all, or so much as resteth unsatisfied.

The Judgement being satisfied, the Plaintiffe by himselfe or his Attorney (if the Defendant to desire it) doth acknowledge satisfaction upon the Judgement in the petty-Bag Office.

It is to be noted, that whatsoever day is given by any of the six Clerks, and by them entred in their Book, worketh nothing, if the same be not entred in the Petty-Bag.

The course used, where the priviledged Person sues.

THE Defendant being arrested by an Attachment of Priviledge, at the Suit of a priviledged man must retaine one of the six Clerks to be his Attorney, and must put in Baile to the Plaintiffs Action, according to the course of the court, which is, to appear from day to day untill the Plea be determined, to satisfy the Plaintiff all such summes of Money as the Plaintiffe shall recover against him by reason of this Suit: Then the priviledged man putteth in his Declaration, and the proceedings thereupon are the same as before, against the priviledged man.

By the course of the Court the Defendant is to put in foure Subsidy men, or sufficient Sureties (be
the

the Action never so small) as appears between *Arnold and Burrall*, 23. Eliz. wherein the Defendant is bound in four hundred pounds, the sume of the action, and every Surety in a hundred pounds.

It Judgement be given for a priviledged man in this court, he may if he will take out Execution against the Defendant as before; but if he will not, then he may take out a *Scire facias* against the Defendant and his Manucaptors upon the Bail, whereupon Judgement be upon the said *Scire facias*, in the Chancery, Execution is awarden the former Actions: But if upon Issue joyned, and sent into the Kings Bench, and upon a Triall there Judgement be given, then is Execution there awarded; and upon satisfaction of the Debt and Damages, the Bail is to be discharged, upon the acknowledgement of satisfaction, as before.

If either the Plaintiff or Defendant upon Declaration of Priviledge, or *Scire facias*, Demur in Chancery the Demurrer being joyned, a day is set down by the Lords commissioners for arguing thereof before them; and if upon the Argument it fall out to be a *Respondeas ouster*, then Judgement is entred thereupon; and if it be against the Defendant then Execution is awarded, and if against the Plaintiff then it is, that the Plaintiff shall take nothing by his Writ, or by the Declaration.

But if he be a *Respondeas ultra*, then is the Defendant to pay costs, and a day given for him peremptorily to plead, or Judgement to be entred: Practice of the chancery, 93. 94. 95. 96.

*A Table of Fees due unto the Six Clerkes
and other the Officers of the Court.*

For all first, second, or other Copies of all Bills, Answers, and others Pleadings whatsoever, as also of all Certificates and examinations made or taken by vertue of any Commission but of this Court, and of the Interrogatories therewith returned, and also of all Declarations, or Proceedings by English Bill, or according to the course of the Common Law, and for Copies of Records, Roll, or Evidences, brought in to be copied, or remaining in the sayd Court, for every Leafe of paper containing fifteen lines.

l. s. d.

0—0—1

For the Inrolling of all Warrants whereby any Patents, Commissions, Licenses, Pardons, Leases, or other Grants whatsoever, do pass by and under the great Seal, after the rate of every skin so passing the great Seal,

l. s. d.

0—2—0

For the Inrolling of all Warrants for all Commissioners for the Peace, or Goale delivery, for a Liberty for Oyer and Teiminer, for Piracies, for the perservation of the Game of the Swans, and for the Commissions for Inquiry sued out for the benefit of any private person, for every of the sayd Commissions,

0—1—8

For

For the Inrolling of all Warrants for all Commis-
sions of appeal, and for the Admiralty, for every one
of them. 4 d.

For the inrollment of every Warrant for every or-
dinary License, or pardon of Alienation, 3s. 4d.

But it is be of more then ordinary length, then ac-
cording to the length after the rate of 20 s. the skin,
and not above.

For the inrolling of all Warrants for all Commis-
sions in the nature of Writs, of *Diem clausit extermum*,
mandamus, *Idcot a probanda*, *Lunaticus inquirend*. *Melins*
inquirend. for every of them 3 s. 4d.

For the inrolling of the Warrants, for every patent
or grant of the custody of any Ward, 8s. 8d.

For the inrolling of the Warrant for every presen-
tation, Donation, or Revocation, to any Rectory,
Vicaridge, Deanry, Arch-deconry, Chancellor-ship,
Treasurer-ship, or Dignity, to any Mertopoliticall,
Cathedrall or Collegiate Church, or for any Can-
non-ship, or Prebend, in any of the said Churches, or
for the Mastership in any Hospitall or other Ecclesia-
sticall living, or for the grant of any presentation or
presentation, *pro unica vel pluribus vicibus thereunto*,
3s. 4d.

For the inrolling of the Warrants for every *Man-*
damus ad instatland. 3s. 4d.

For the inrolling of all Warrants for all Licenses
for wines for every life. 3s. 4d.

Or such Fee not exceeding that proportion, as by
the Commissioners shall be set down, formerly they
payd although granted for three lives, 6s. 8d.

For the inrolling Warrants for every pardon of
Oulawy. 3s. 4d.

For the inrolling of the Warrants for every Deniza-
tion, or Commission of Bankrupts, 3s. 4d.

For the Writing of every Exemplification, as well
of

of records in the Tower, as of any record whatsoever being in their custody, after the rate of every skin

01-06-8

Of every client for every Term whilst his cause dependeth undetermined, by decree or by dismissal the Termly Fee of,

0-3-4

If there were twenty Plaintiffs or more in one bill they all pay but one Fee for one Term,

0-3-4

But for every three Defendants, accounting the Husband and the Wife but for one person, there is due for their first appearance,

0-3-4

And upon the first appearance if every Defendant appears severally by himselte, he is to pay the Fee of three shillings four pence, but every Term afterwards during the continuance of the cause, there is only the Fee of three shillings four pence the Term to be paid for all the Defendants that appeared in any Term or vocation, in the same cause.

For a *Subpoena* Writ to answer,

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For the Return of the Proclamation,

0-0-0

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